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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BROWN & WILLIAMSON TOBACCO CORPORATION,
Plaintiff,

VERSUS CIVIL ACTION NO. 1:95CV76GG

MERRELL WILLIAMS; ET AL,
Defendants.

DEPOSITION OF MERRELL WILLIAMS
VOLUME II
Taken on April 18, 1997

Reported by Monica Schroeder, C.S.R. # 1285
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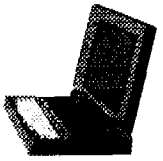

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VOLUME II

Taken at the Offices of Brunini, Grantham, Grower & Hewes, PLLC, 1400 Trustmark Building, 248 East Capitol Street, Jackson, Mississippi, on Friday, April 18, 1997, beginning at 9:15 a.m.

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STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition may be taken at the time and place hereinbefore set forth, by Monica Schroeder, Court Reporter and Notary Public, pursuant to the Federal Rules of Civil Procedure, as amended;

That the formality of **READING AND SIGNING** is specifically **NOT WAIVED**;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

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MR. SMITH:

We received some documents from Mr. Royals' office yesterday by fax, and I just want to state for the record you and I's conversation outside, Tom, just to keep it clear.

A letter from Mr. Williams to Mr. Royals was covering the documents that were faxed. When I recognized it was a letter from Mr. Williams to Mr. Royals, I asked Mr. Royals this morning if that letter was produced inadvertently. He said, yes, he was out of town, that it was inadvertently produced. I have returned that to him and have told him that all copies in our possession will be destroyed.

MR. ROYALS:

Good. Thank you.

MERRELL WILLIAMS

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CARROLL:

Q. Mr. Williams, when we recessed this deposition in September of 1996, we had marked Brown & Williamson's privilege log as Exhibit 8 to the deposition. And I started to ask you certain questions about it. Do you recall that?

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A. Yes.

Q. And you were required to decline to answer those questions because of concerns regarding the Kentucky injunction?

A. Yes.

Q. With those issues having been disposed of by Judge Gex and Magistrate Guirola, I would like to now turn back to that line of questioning and ask you, first of all, do you recognize any of the documents that are listed on Exhibit 8, the privilege log prepared by Brown & Williamson Tobacco Corporation?

MR. SMITH:

Jim, before he answers that, there's one other matter I meant to take up before we started. Under the protective order entered in this case, we invoked the provision that allows us 15 days after the deposition to designate any matters in the deposition, whether testimony or exhibits, to be confidential under the protective order, and therefore, all testimony and exhibits will be treated as confidential by the parties until that designation within 15 days, correct?

MR. CARROLL:

It says what it says, and that's my

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understanding.

MR. SMITH:

Right. Thank you.

MR. CARROLL:

I thought that all of the proceedings were under protective order and protected anyway. Maybe not.

MR. SMITH:

Well, I want to make sure that it's understood at the beginning that we do have 15 days, and that until that designation was done, that all of the testimony and the exhibits will be treated as confidential.

MR. CARROLL:

Fine.

Q. Do you recall the pending question, Mr. Williams?

A. Yes, sir, I do. Would you repeat the question, please?

Q. Okay. The question was, referring you to Exhibit 8, do you recognize any of the documents that are listed on Exhibit 8?

A. Yes, sir, I do.

Q. Characterize those documents that you recognize, please.

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MR. SMITH:

Object to the form.

A. Just a brief statement that would include a landscape of the documents in a whole. Before I get to the point of-- I'm convinced, by just looking at a couple of the privilege log document analyses by Brown & Williamson, that there is a-- has been a continuing fraud from at least 1954, continuing on until today. And with that in mind, I could certainly point this out. I would like to use the board up here, if that's available to me. I asked for a chalkboard.

MR. CARROLL:

Q. Well, it might be better, since we're making a record here, if instead of the chalkboard, you used a paper. There seems to be one back there that we could--

MR. HEWES:

Either one of them is available.

MR. CARROLL:

Q. To keep the record clear, Mr. Williams, if you want to write on that paper back there, that can be made a part of the record so that someone else who is reviewing this testimony will have it to look at. Otherwise, that chalkboard, I think, will be erased

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at some point.

A. Well, anyway, I can maneuver it so that everybody can see it, and especially my counsel over there.

MR. CARROLL:

Okay.

A. In addition to fraud, I recognize potential problems that strike me as being conspiratorial. I felt that I-- I know that some of these documents are in the-- certainly in the selective process of the documents that I received through the in camera are directed toward an ongoing conspiracy, as I understand conspiracy, and perhaps a racketeering, as I understand RICO, and I would just point out that there are a number of issues that strike me as criminal.

And with that in mind, I think that using a privilege log, a-- I can identify these documents also with the documents, themselves, which I have reviewed. I could take those and show you what I mean.

Q. Okay. I'm not sure I understand exactly what-- how you want to answer the question. You said you might want to use the board, there, to give us a background, universe. Why don't you do that.

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MR. SMITH:

Let me interpose an objection, here, to the question asking for a narrative answer, and object to the deposition proceeding by narrative and not by question and answer.

In addition, I would object to counsel eliciting expert opinion from someone who is not an expert in any way, shape or form, as to legal conclusions as to civil or criminal legal violations or legal conclusions as to conspiracy or other types of claims, as he stated.

MR. CARROLL:

Q. That's a form of a question objection, Mr. Williams, and you can go ahead and answer. You can go ahead and answer.

A. Let's start with the date of 1954. And, actually, from the documents that I have in there, you might include this date, as well. But there is a publication which occurs on this date.

Q. 1954?

A. 1954. Dealing with the-- and this is the TIRC. TIRC means the Tobacco Industry Research Committee. This was a group of-- most of the manufacturers, including Brown & Williamson and Phillip Morris, as well as others, and manufacturers

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such as wholesales and warehousemen.

TRC was the early form, and the corporation did not change. And I'm going to call it what it is. It's a nonprofit corporation registered in Delaware, and the extension is CTR. And I'll refer to both of these. CTR is the Council for Tobacco Research, and the change over in name occurred in 1964.

Q. Change over in name from TIRC to CTR?

A. Correct. So we have the same organization. And nobody has disputed the fact, from Brown & Williamson or anybody else, that I know of, that these are the same thing. It's important to note--

MR. SMITH:

I object to the form of that.

A. This is no-- this is a not-for-profit corporation, which is organized under the laws of Delaware, I understand. And the beginning of the fraud began-- well, the beginning of the onset of the fraud begins at this point--

MR. CARROLL:

Q. Which point?

A. -- in time. With the setup of this organization.

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Q. Which organization?

A. The TIRC. Together with that, I'll point out an organization which was actually a public relations. And I identify this as PR group, which was going on at the same time and was the public relations group for the industry at large, all of them.

The name of this organization is called Hill & Knowlton. And I believe they're out of New York, perhaps Washington, as well. I don't know. It's a fairly sizeable public relations firm.

I put this down here because this organization overlaps with this organization. And certainly, until the date of approximately the change-over, 1964, the Tobacco Industry Research Council was manned, staffed, run by this group, right here, together with the group of Tobacco Industry Research Committee, that being the Brown & Williamson plaintiff in this action, as well as Phillip Morris and the other manufacturers.

In 1953, the members of this committee were aware of the Royal-- I will just-- the Royal Physicians College Report, which was illuminating in the fact that it pointed directly to the use of tobacco products, especially cigarettes, and the

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connection with cancer, cancer of the lung, particularly, but a number of other cancers.

At the same time, in the United States, in 1953 and earlier, they had more or less consummated a consensus that lung disease, bronchitis, cancer of the lung and some other diseases, such as coronary heart disease were the product of tobacco, were the by-product of the tobacco use, rather.

The Tobacco Industry Research Committee formulated, with the advice of Hill & Knowlton, the PR people, a set of rules on how to deal with the problem of lung cancer, coronary heart disease, and how to communicate this to the public.

As a nonprofit organization, it was founded, and, in 1953, the gentleman-- and I'll refer you to the document, if I may.

Q. Yes, sir.

A. This is a document--

MR. SMITH:

What question was this in response to?

MR. CARROLL:

It's in response to the question of the universe--

A. Landscape of documents, is what I'm trying to--

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MR. SMITH:

I'm sorry. What question, Jim?

MR. CARROLL:

I just told you.

MR. SMITH:

I didn't hear you tell me what the question was.

MR. CARROLL:

Q. The question was, what was the landscape, the universe leading up to the documents that are on the privilege log, the background.

A. And I have recognized that as part of the fraud.

MR. SMITH:

I would continue to object to the narrative form of the testimony and request that it proceed by question and answer, one.

And, two, Judge Guirola has made it clear that he's not going to try a tobacco case in this case, and it seems that we are starting down that road very early.

MR. CARROLL:

Q. What document do you have in your hand?

MR. SMITH:

I'd also object--

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A. Document Number 337.

MR. SMITH:

-- excuse me, on the grounds to the fact that Mr. Williams has no personal knowledge of any of the information of which he's testifying.

A. Of Document Number 337, logged as MW-01395, dated December 28th, 1953, this is a typewritten document called a Frank Statement to the Public by the Makers of Cigarettes. This would refer to that date, and this is the prior-- this is actually the same wording. You'll find this in the publications of over 488 newspapers across the country in the following month, which was January.

And I'll pass this around so you can take a look at it, but basically, it says one thing that's most important. The TIRC and the CTR, as it was to become, is totally independent, totally independent of any influence by the tobacco industry; that they were going to do research. They were going to do research under the TIRC to find out if there was a problem with tobacco.

There was a problem in the way that they could-- that they could solve, that there was some inducement to do this and to tell the truth to the American public.

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MR. PRICE:

Excuse me, Mr. Williams. Mr. Carroll, we understand that this evidence is being solicited under the crime/fraud exception defense, which is contained in the answer of your clients. And we have no objection to Mr. Williams identifying the particular documents which he contends support that defense, and then with that particular document, discussing any relevant background material to it.

But if he's going to go through a professorial lecture, we'll never complete this deposition today and in two weeks. We would request that you ask him questions about-- ask him to identify the specific documents which he says supports this defense, and then he can testify about those documents. And as long as the testimony is relevant to those documents, we'll have no objection.

MR. CARROLL:

I am going to request that the Brown & Williamson team have one person make objections, if that's the way you want to proceed. I don't think it's appropriate to trade back and forth, making objections, and I'm not going to respond to that kind of an objection.

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I think that the witness is trying to give a background leading up to the justification for what he is accused of having done. And I think he's entitled to do that, and I think he's entitled to do it in his own words, as long as it relates to these documents. And I'm going to bring him to these documents and why he took them, and I think he's entitled to explain why he did what he did.

Q. Go ahead, please, sir.

A. Yes, sir. Continuing with this document called the Frank Statement-- it's Frank Statement to the Public by the Makers of Cigarettes, which was-- in this form is an unsigned form, but as it appears in the newspapers in 488 publications, it appears exactly as it is. I've checked it. Perhaps the printing style is different.

But the point is that this document, which was manufactured in 19-- it's a three-page document-- which was manufactured, includes the name of the members of this committee, and one is Timothy T. Hartnett, president, Brown & Williamson Corporation, Page 3.

MR. CARROLL:

We offer that as Exhibit 10.

(Exhibit 10 was marked.)

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A. So we have establishment of the independence of research, hands-off, fair, no lawyers involved, nobody involved. We are going to find a cause for cancer. That's the summation of this document.

MR. SMITH:

Object to that as a misstatement of the facts.

A. The public perception was laid out, and you have a series of follow-ups.

MR. CARROLL:

Q. What do you mean, a series of follow-ups?

A. Well, by follow-ups, I mean the Tobacco Industry Research Committee intended the public to be impressed, I think, specifically with the awareness that they were going to find the cause and get rid of it. If there was a cause for cancer of the lungs, which they were aware of in 1953 and earlier, they were going to find this, get rid of it through the research, which was independent. I stress the word.

MR. SMITH:

Let me interpose an objection. This witness is testifying as to what was in other people's minds in the 1950s.

A. It's published particularly in the

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newspaper, counselor. May I continue?

MR. CARROLL:

Q. Yes. Mr. Williams, let me explain something just for the record and for you. Counsel will make objections. They are for the record. We are not going to resolve issues that are raised by counsel's objections.

So I don't mean to tell you that they may or may not have merit. But for purposes of answering the questions, you go ahead and answer the questions and don't feel like you've got to respond to the objections because that could make your testimony go a lot longer.

A. All right. I'll try to make it faster. Okay. In 1958, you have another date here that's important, why I think this exposition is important. You have the formation of The Tobacco Institute. And The Tobacco Institute was essentially established as a lobby-- it was registered as a lobbyist in 1963, and I believe it was principally established in order to both lobby and to present a public relations point of view regarding the tobacco industry and the problems that it faced.

I want to separate that. I want to deal with from '54 to '58, particularly. In 1954, this

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independent group began to use the firm of Hill & Knowlton to advocate reasons for using tobacco products in spite of the fact that they had said that they were going to do research, hands-off research, and this was going to be not controlled or manipulated in any way.

I would like you to-- I can't-- because it's a public document, it's called a Scientific Smoke Screen, and it was produced by Tobacco Liability Group and published some years back. But the gentleman that released the documents is not nearly as significant as-- well, maybe is as significant, but I want to put this as an exhibit so that you can understand what I have to say further on.

Anyway, this was produced by the tobacco products liability project in Boston by Professor Richard Daynard. And it has to do with the fact that the TIRC, particularly, was initiating an effort to take the public into a smoke screen, so to speak. And I haven't marked every place in there, but by "smoke screen," I mean that there was a subterfuge, there was a mendacity, if you will, not a total lie, but enough so that you can figure out that what they were doing was not trying to do research for the

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purposes of showing the people, the American public, that this is the truth. We're really hands-off. Lawyers are not going to get involved in this--

MR. SMITH:

Let me stop here and interpose an objection. As I understand, this is not one of the documents that Mr. Williams took from Brown & Williamson, nor is it a document that he had access to while he was at Brown & Williamson; therefore, it is irrelevant to his actions with regard to the documents at issue and his actions.

MR. CARROLL:

I don't see how we could possibly resolve an objection like that, but I think the reasons why he took the documents are highly relevant, and that includes background information that he may have had, regardless of whether it was one of the documents he took or not.

MR. SMITH:

Not if he didn't have it before he took the documents.

MR. CARROLL:

I understand the objection, but we're not going to resolve it here.

Q. Mr. Williams, let me ask you this. You've

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just handed me something about three inches thick. What is that?

A. That is a-- the first part of that-- it's in three parts. The first part is an advertising set of documents which was released by an official who worked for the firm of Hill & Knowlton. And he presented these documents to Richard Daynard, and Mr. Daynard later circulated them.

What Mr.-- the man who gave these documents to Richard Daynard-- pulls from this are records from Hill & Knowlton, which prove that they were-- the industry had no intention, through the publications that they had, of coming forth with the truth. In other words, what they were after was saying just the opposite.

And I'll give you a good example of that. In that document you have before you is an actual statement by a Hill & Knowlton official stating that what we really have to do is we have to find some way to combat this. And so they pressed into service certain people, writers, particularly.

I have here a book called--

Q. Wait a minute, now. Wait a minute.

MR. PRICE:

Excuse me. Give us a recess for just a

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minute.

(Off the record.)

MR. SMITH:

Let me state for the record that I state a continued objection to the narrative form of this deposition. I object to the witness simply picking out hearsay documents and making statements about them, particularly when I believe the document he's referring to now was not made available until long after Mr. Williams left Brown & Williamson. It could have no conceivable relevance.

I don't want to keep interrupting the deposition with these objections, and I would state a continuing objection to the nature and to the way in which the deposition is proceeding, narrative form, to testimony through hearsay and to testimony which does not relate to the documents at issue in this case or Mr. Williams' work at Brown & Williamson.

MR. CARROLL:

You can have a continuing objection and that may save us some time. We'll agree to a continuing objection.

Is that okay with you, Tom?

MR. SMITH:

And if I may have a continuing objection

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on all the grounds stated heretofore.

MR. CARROLL:

Sure. I'm going to ask the court reporter to mark this big pile of documents that has on the face of it, "The History of Advertising Archives," as Exhibit 11, collective Exhibit 11.

(Exhibit 11 was marked.)

MR. CARROLL:

Q. Mr. Williams, you were about to refer to another document. We've marked the group of documents as Exhibit 11 that you were just referring to, and you were about to bring out another document.

Can I see that document, please, sir?

A. Well, perhaps if I can take this in a little bit more of a consecutive dating. In that document, you have a document that was published in 1966.

Q. All right. Are you referring to the document that says, "It Is Safe to Smoke?"

A. Yes, sir.

MR. CARROLL:

Let's mark that as Exhibit 12, please.

A. There are two parts to it. That's actually the copy of the book, itself.

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(Exhibit 12 was marked.)

A. A side note, or parenthetically, I might point out that the Surgeon General's report was issued on January 11th, 1964, and that there was a consensus among the Surgeon General's committee panel that it was not safe to smoke, and that this particular document is the by-product of the constructive efforts of the public relations outfit, The Tobacco Institute, naming them Hill & Knowlton, Tobacco Institute and the CTR, as it was then.

MR. CARROLL:

Q. By "this particular document," you're referring to Exhibit 12, sir?

A. The one I just gave you.

Q. Yes, sir. Look at it and be sure it's Exhibit 12, because otherwise, your testimony will be difficult to follow.

A. "It is Safe to Smoke," by Lloyd Mallan, Exhibit 12.

Q. All right, sir.

A. Going back a little bit earlier-- and I would like to point out that in these documents, the exhibit-- what is that exhibit?

MR. DURHAM:

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A. In these documents, which were offered to Mr. Daynard many years ago, I suppose, and he published them, it states specifically that we want to get this book published. We want to get a writer to publish the book.

MR. CARROLL:

Q. Which book?

A. That book.

Q. "It is Safe to Smoke?"

A. "It is Safe to Smoke."

MR. SMITH:

I would object to the exhibit on the grounds that it is incomplete.

MR. ROYALS:

I think we could agree to supplement the record by putting the rest of it in.

MR. CARROLL:

Sure.

A. I can get that. You mean the front piece?

MR. SMITH:

No. There are a number of pages missing.

A. Okay. I have several copies of that.

In 1955, following the same logic, E.P. Dutton published, "Why Stop Smoking?" by Albert A.

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Ostrow. And while it may be incomplete, it states specifically that-- and even in the title that you don't need to stop smoking or why stop smoking, and this was a commissioned work by these organizations.

MR. CARROLL:

We offer that as Exhibit 13.

(Exhibit 13 was marked.)

A. In the same year that the Tobacco Industry Research Council was formed, in December, there was an article published in Harper's magazine, which was commissioned out of Exhibit 3, you'll find. Leonard Engal, is the author. The title of the article in Harper's, Volume 209, December of 1994, Number 12--

MR. CARROLL:

1994?

A. 1954. Sorry. "Do We Have to Give Up Smoking?" Harper's magazine.

MR. SMITH:

Excuse me. The witness, I believe, said something about Exhibit 3. I'm not sure what that reference was.

MR. ROYALS:

I think he meant 13.

Did you mean 13?

MR. CARROLL:

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Q. "Why Stop Smoking?" Is that what you were referring to when you said Exhibit 3?

A. Yes.

MR. CARROLL:

All right. The Harper's magazine article, December 1954, is offered as Exhibit 14.

(Exhibit 14 was marked.)

A. Another commissioned work from Exhibit 11, you'll find, it is top cancer-- It's from Cosmopolitan of November 1954. And, remember, the publication which-- if you can view it as a contract to America, so to speak, the publication from this group saying that we want to do independent studies was commissioned by their--

MR. CARROLL:

Q. Publications from which group? You've got to identify it specifically, recognizing that we're looking at it, but somebody is going to be reading this record cold.

A. Okay. I'm actually referring to the publication of the "Frank Statement to Cigarette Smokers," which went out in 488 newspapers. It didn't say there was anything wrong with it. It just said-- with tobacco. It said, essentially, what we have here is a problem. We're going to try to solve

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it. We are going to solve it through research, and we're not going to touch these researchers. We are not going to have anything to do with them.

MR. SMITH:

Object to the mischaracterization of what the document stated.

A. The article in Cosmopolitan is dated November 1954. Top cancer-- American cancer-- top American cancer expert, and this is a commissioned work from the Hill & Knowlton outfit. And I suppose you recognize the face on that.

MR. CARROLL:

We offer that as Exhibit 15, please.

(Exhibit 15 was marked.)

A. By the same token, I think the titles speak for themselves, but nevertheless, in Harper's magazine, another commissioned article, entitled, "Do We Have to Give Up Smoking?" by Leonard Engal. Maybe that's-- and that is December 1954. And I think I've already-- have I already said that?

MR. CARROLL:

That will be Exhibit 16. We offer the December 1954 Harper's magazine article as an exhibit.

MR. DURHAM:

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Is this different than the other December 1954 Harper's article, which is 14?

MR. SMITH:

It's exactly the same article.

MR. DURHAM:

I wasn't sure about that, but I'll--

MR. CARROLL:

We'll withdraw 16.

A. Okay. This is a-- this is a memo. I have not-- I don't produce these as the documents, themselves, but I will say that there are further discoverable items in that Exhibit 11, which have the same tone to it or intent to deceive. Pegeant \ magazine, April '55, P-a-g-e-a-n-t, of April '55, published an article which is identified in that Exhibit 11. "Go Ahead and Smoke; Smoke Moderately." And that's by a Dr. Rienhoff, R-i-e-n-h-o-f-f.

MR. SMITH:

I'm going to state an objection for the record in that it appears that the witness, Mr. Williams, has prepared notes with which to make his speech here today, and that it is, in fact, a speech and not testimony by question and answer. And we simply wanted to make a notation that he is speaking from notes.

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MR. CARROLL:

Well, obviously, we are not going to resolve our differences. I thought you were going to reserve your objections--

MR. SMITH:

I am, but when there is an occasion that something different happens, and I want to note it for the record--

MR. CARROLL:

I understand.

MR. SMITH:

And I'll try not to do that, except when I feel like it's necessary to protect my client's interest.

MR. CARROLL:

I understand that. And I don't criticize you for doing it. I do object to your use of the term "speech." Objecting to one another is not going to get us anywhere, so--

MR. SMITH:

Let's go.

MR. CARROLL:

-- I suggest we move on.

Q. All right, Mr. Williams. If you want to look at your notes, go right ahead.

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A. Okay. Another publication which is available in the public library, which indicates the same kind of activity-- in other words, to capture the attention of the public and to tell them it's okay to smoke-- is by a Mr. John Pfeiffer, P-f-e-i-f-f-e-r, and that's referred to in that document. And that's all I can say about it, except that it was published in 1955, and again, in '56, I think.

Another publication, "A Scientific Perspective on the Cigarette Controversy," 1954, April 14th. Another one, The Current Medical Digest, by a Dr. Huber. I would like to make a comment on that. Dr. Huber was a scientist, and that's in the April edition, The Current Medical Digest, 1954. These are all commissioned works, so to speak.

Q. Commissioned by whom?

A. Commissioned by the public relations firm to inspire a need to continue a controversy involving smoking and health.

There is a publication called "Smoke Without Fear" in true magazine of 1954, September, that is by Donald C. Colley. It's identified in Exhibit 11.

There is a publication in Cosmo magazine

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of November 1954, which also has the same-- in Exhibit 11, has the same intent.

MR. DURHAM:

Is that the same as Exhibit 15?

A. That could be, yes. Yes, it is. As a matter of fact, you're correct on that. I say "done" by that because I had already found that document.

There is a document from Argosy magazine by Dick Reddy, August 1954.

And then there is an article by-- in "People Today," "Phoney Cigarette Scare." This is March 23rd, 1954, in Popular Medicine Argosy.

MR. CARROLL:

We offer that as exhibit-- these handwritten notes as Exhibit 16.

(Exhibit 16 was marked.)

A. The next document is a book that was commissioned. And these documents reflect that this book was actually paid for in London by a Rosser Reeves, R-e-e-v-e-s, who represented Brown & Williamson in a corporation called, the Tide Rock Corporation.

He enlisted-- he went to London and he-- the list is from the documents, themselves, that Brown & Williamson has given to me. He went to

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London and he commissioned a man by the name of Kitchin to rewrite a book for the American public. The name of the book is "You May Smoke." It was published by Harcourt-- it's by Harcourt Kitchin, H-a-r-c-o-u-r-t K-i-t-c-h-i-n, a British man.

Just to give you a little note, here, "Fact: Some studies actually reveal higher cancer rates among nonsmoker groups. See report from Ohio, South Africa, Australia. Rumor: If you do smoke, it's best not to inhale."

It's basically a subterfuge, and it was actually commissioned and paid for by Brown & Williamson's hired firm called Tide Rock.

Mr. Rosser Reeves, personally, in these documents-- and I can show you that-- took a trip to England, was over there and bought it.

Going to the issue of smoke, don't listen to the Surgeon General's report. And this publication is dated-- well, Award Books. It's dated, the first printing, in 1966.

MR. CARROLL:

We offer it as Exhibit 17.

(Exhibit 17 was marked.)

A. I'm going to get into closer to where the CTR begins more involvement, and that's after first--

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the first Surgeon General's report, which was in January 11th, 1964, and the recreation of CTR, but still as a nonprofit organization. The same article, same everything. And I don't think that's ever been disputed. And talk a little bit about what was extended into an area of Brown & Williamson's work, actually, with Mr. Rosser Reeves.

Mr. Rosser Reeves was a fairly high-- highly-regarded public relations man. As a matter of fact, he ran Eisenhower's campaign in 1953.

Mr. Reeves and the people in the PR relations in Brown & Williamson manipulated a means of getting to the public in a project because they didn't feel that The Tobacco Institute was doing good, as good as they could, quote. That's pretty much of a quote.

And then in October of 1967, there is an article in Barron's, which is a Wall Street publication, which gives you a good reason to continue smoking, in spite of the warnings, in spite of whatever has gone on in 1966, and when we have the hearings in 1965 and '66, one in '64, and after the Surgeon General's report, the first.

That was paid for through Rosser Reeves, by Brown & Williamson, exclusively, as I understand

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it. It is found in the documents here. It was meant to tell the people, and it says so; document, read it, see what it says. It says, smoke. It won't hurt you.

MR. CARROLL:

We offer it as Exhibit 18.

(Exhibit 18 was marked.)

A. It is a subterfuge. One of the most well-known-- and I'm almost embarrassed to mention it because it's been around so long and so many people know it. There was an article in true magazine which was subsequently published in the National Inquirer, which Mr. Rosser-- I believe that John Burgard, or Mr. Blalock and John Burgard and Rosser Reeves got together and bought a writer to go out to Shook, Hardy & Bacon, pick up a little information, so to speak, from their scientists, and to write an article which was published in true magazine. And eventually-- and it set out there for a while. And then it was picked up-- it was under the false name of John Golden, I believe, or something like that. It's in the documents.

But the purpose of the article is spelled out in this, and it's B&W caught, so to speak, at the action of trying to create this subterfuge for the

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American public.

In other words, they're buying a writer, just like they did back in the '50s, to tell, through the PR, that this time, it's Brown & Williamson solely that's doing this. The FTC caught wind of this, and they did an investigation. And I don't think it came to anything, but nevertheless, some things happen like that.

Q. Mr. Williams, you've just handed me an article. Can you tell me what that article is, where it was published?

A. This was published--

Q. Look at the one-- I think it says, Consumer Reports.

A. It is Consumer Reports, and Consumer Reports was the one that identified this erroneous use of an actual-- well, it was actually a writer who was doing under the pseudo name of John-- I think it was John Golden, presenting a reason for people to smoke, essentially.

Q. And you're saying that this Consumer Reports article is exposing the truth about the true magazine article?

A. Right, exactly.

Q. Is that one of the things that was on your

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mind when you did the things that you did?

A. Well, yes. And particularly going to the point of hiding what the Surgeon General report had said, the panel, what the law had written down, the study of the legislation leading up to the law in 1966, which is the Cigarette Labelling Act, the first one.

MR. SMITH:

I object to the form of "did what you did." That is entirely vague and ambiguous.

MR. CARROLL:

Yes. Why don't you clear that up. But first of all, let's make the Consumer Reports article Exhibit 19, please.

(Exhibit 19 was marked.)

MR. CARROLL:

Q. What did you mean when you said, "did what you did?" You heard Mr. Smith's objection.

MR. SMITH:

Well, actually, he didn't say that. You said that.

MR. CARROLL:

That's right. I did.

Q. What did you do, Mr. Williams?

A. When?

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Q. Is that article that was just introduced as Exhibit 19 one of the things that was on your mind when you removed the documents that are the subject of this lawsuit, the information in it?

A. It was. And I think this directly goes to the heart of fraud and a conspiracy.

Q. Thank you. Excuse the form of my question. I apologize. Go right ahead.

A. One of the most compelling--well, one of the people who has been involved from the-- as long as-- as early as the early '60s, I believe, was a British researcher. And I know he was writing in '63 because when I was at Baylor. He had a textbook that I was reading from.

But he wrote a number of books, articles and is-- appears in legislation as a spokesman for the tobacco industry by such books as "The Causes and Effects of Smoking," giving you another reason not to stop smoking. And that's just one example. And I think the date on that is 1980.

But he goes back a little bit further than that. I think Dr. Eysenck first presented testimony before Congress in Senator Neuberger-- the Senate, I believe, Senator Neuberger's subcommittee in 1965. And I'll show you that later on.

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Q. Is this article, "The Causes and Effects of Smoking" by Mr. Eysenck, one of the things that you had on your mind when you removed these Brown & Williamson documents?

A. Yes, sir, it is.

MR. CARROLL:

We offer it in evidence as Exhibit 20.

(Exhibit 20 was marked.)

A. Dr. Eysenck, I believe he's a psychiatrist with the London Institute of Psychiatry, received over a period of-- in the early 1960s until today, I would assume, but I know for a fact 1990, quite large sums, and--

Q. Wait a minute. From whom? Quite large sums from whom?

A. Well, there are two-- from Brown & Williamson law department, from Shook, Hardy & Bacon. I assume the accounting department handled it. From Shook, Hardy & Bacon, which is in Kansas City, Missouri, and has extended to other countries, as well, and from Ed Jacob and the firm of Jacob, Medinger & Finnegan, which I believe was a New York firm, but also other places.

Q. What proof do you have of that?

A. The documents, sir.

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Q. Show me.

A. The documents from Brown & Williamson.

Q. Show me.

A. Well, may I finish this one--

Q. Okay.

A. This item here. Dr. Eysenck's, "Smoking, Personality and Stress." And they're giving you pretty good reasons.

In pounds or dollars, this gentleman, who is a psychiatrist, more or less witnessed for the industry, through a routing of money, financial givings, with the term "CTR" on it, the Council for Tobacco Research, routed through, in the early days, in the '50s, '60s, called the Witness Procurement Program, and after the initial bell ringer of the First Surgeon General Report, the CTR, and directly, projects non-related to the CTR called special projects.

Mr. Eysenck, Dr. Eysenck has received probably millions of dollars, perhaps less than that. I can't give you precise figures.

But the fact that he has not and did not identify himself in some cases-- in some cases, he had identified himself as being represented by The Tobacco Institute, which is a lobbying group, but he

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made an enormous impact on the American public.

And when you're talking about funds that don't come from the lawyers, they come from Brown & Williamson, in concert with the other tobacco companies, you're talking about a kind of organization that's producing a fund to undercut the Surgeon General's report and goes directly to the heart of the fraud on the American public.

And Brown & Williamson, incidentally, is a government contractor, and therefore, I would say that considering the fact that they sell their product to the military, that they're subject to, perhaps, some laws that are in the federal area, maybe the False Claims Act.

I think it will become clear, as I get through the documents, what I mean by the CTR and special projects. But I think I'm done with that part. That gives you some indication of what I think is the-- you know, some exposition, here.

I have-- I might have had a little problem in identifying, because I am not a person with a law degree, but one of the things that aroused my curiosity in the process of dealing with these documents very early on-- and I did my research outside the confines of Brown & Williamson-- was this

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special projects concept, how this money was funneled, how it was-- how it came through, where it ended up, who took the tax write-off, for what purpose was the tax write-off. Was it a nonprofit, for example.

If this CTR is a nonprofit, then how can you procure witnesses and put them under the umbrella of a special project, in concert, by a market share, per market share, Brown & Williamson taking 16 percent, Phillip Morris taking 14 percent, paying either their lawyers and then taking a tax write-off-- somebody had to take it-- for genuine research projects intended to find the truth about smoking and health?

When these people that they procured, that these lawyers got-- either ended up lobbying or ended up in, say, the Journal of American-- or the JAMA or some environmental magazine with the purpose of the subterfuge, or, more likely, mendacity.

When, on February 6th, 1992, Judge Sarokiu, who had been involved in the Cipollone case for ten years, and was dealing with another case, came down with an opinion on Susan Haynes v. Liggett. He made an analysis of certain documents and these documents do appear in a-- I believe they

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might be in there.

MR. SMITH:

Mr. Williams, may I see the order that you're referring to?

A. I'm getting lost, here.

MR. SMITH:

May I see the order that you're referring to?

THE WITNESS:

Sure. It's not a complete order.

MR. SMITH:

I would note for the record and object to the use of this document on the basis that it's an order that was subsequently reversed, and on the basis of which Judge Sarokiu was ordered recused from the case by the circuit court.

MR. CARROLL:

I don't want to get into an argument with you about that.

MR. SMITH:

And a case in which BW was not a party.

MR. CARROLL:

I understand your objection to that, and I think what we are looking at right now is this man's state of mind at the time he removed these documents,

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regardless of the outcome of the litigation that he makes reference to.

So, please, go ahead.

MR. SMITH:

Could we also clarify? You say when he removed the documents, because according to his testimony, he began removing them within a few months of arriving in 1988 and continued to remove them for four years, until 1992. Are you talking about throughout that period?

MR. CARROLL:

Well, that would encompass it all, wouldn't it?

MR. SMITH:

That's what I wanted to know.

A. I refer to this because this raised my consciousness to a level of intense awareness that I had done the right thing, that I had a reason to do it, and that someone else believed, as I did, that this man was a respected jurist, and he was recused on the basis of the fact that this was published and they didn't have a basis of appeal.

But nevertheless, what he has to say is, in this court's opinion-- and this is what raised my conscience, and in dealing with the issues of special

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projects, he quotes many of them. And he says, in this court's opinion, no evidence could be more damning. Quote, these minutes-- referring to minutes between the lawyer and another lawyer, in which it's described on Page 33 of that opinion-- essentially, Spielburger and Aviado, who both appear in special projects, wanted to do and to protect it under the lawyers. That, to me, is a quote. Since it's a quote, is the basis for which Judge Sarokiu said this.

These minutes explicitly acknowledge that a supposedly independent scientific director of CTR channeled research into special projects for defendant's litigation efforts.

But even more disturbing is the defendant's announced practice of using the special projects division in order to shield damaging research results from the public. And, again, B&W is a contractor, quote, and the FTC.

That raised my conscience. And I think when you go back and look in the legislation and you see some of this, you begin to wonder. And that's what-- exactly what caused me to be aroused to the point of getting confirmed, confirmation that I was correct. I was right.

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I submit that this document-- we'll put it into the record. On the back, you'll find some publications from Exhibit 11, which are excluded from Exhibit 11 but appear here. And they refer to CTR special projects. Some of the names and some of the prices that the industry paid through their lawyers are people that you will hear about in these documents, Salvaggio, Seltzer, Sterling, Rothchild, Russek. This is a public document. It's been out there for some time and it was exhibited, I think, in the case in Minnesota and circulated by Mr. Daynard's group.

MR. CARROLL:

Q. That's the opinion of the United States District Court for the District of New Jersey, dated February 6, 1992; is that correct?

A. Yes.

Q. Is that one of the things that were operating on your consciousness and conscience at the time that you removed at least some of the documents from the Wyatt, Tarrant & Combs firm?

A. Yes, sir.

MR. CARROLL:

We offer that as the next exhibit.

MR. SMITH:

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Let me state that this has multiple documents that aren't related to each other. There is a transcript of congressional testimony. There is some correspondence from Brown & Williamson. There is a table of documents-- it's a compilation of a number of unrelated documents. Do you want the whole thing as--

MR. CARROLL:

Yes. Go ahead and put it in.

(Exhibit 21 was marked.)

A. In 1965, the hearings were held to determine whether or not the Surgeon General was correct and to see what kind of activities--

MR. SMITH:

Let me state an objection-- because I have just begun paging through-- that one of the documents appears to be a letter dated January 3, 1966, written by Addison Yeaman, the general counsel of Brown & Williamson, and appears on its face to be a document from the general counsel to management. And I have not had a chance to review it, but I do object to this document on the basis of privilege.

Similarly, the table at the back, marked Plaintiff's Exhibit 535, unless that's an exhibit number from a trial, which I don't know, it is marked

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"Personal and Confidential/for counsel only," and I would object to it as privileged, also.

MR. ROYALS:

Where did these documents come from?

THE WITNESS:

From the tobacco control liability-- it's called a group. I'm not sure. It's Richard Daynard, out of Boston.

MR. ROYALS:

Did you get them for--

A. I bought them, yes, purchased them. I think Fox may have purchased them. I'm not sure. I don't know.

MR. SMITH:

As I say, I do not know what that exhibit sticker signifies, but I feel compelled to make that objection on behalf of my client.

MR. CARROLL:

Maybe I misunderstood the court's order. I thought we were proceeding with the understanding that certain privileged documents were going to be produced, and that the objections to their privileged and confidential nature were not waived.

MR. SMITH:

Well, I do not believe that either of

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those documents were documents that were stolen by Mr. Williams. Okay? That's why I'm making a specific objection as to the--

MR. CARROLL:

I see. You think they must have been stolen by someone else?

MR. SMITH:

I don't know where they came from.

MR. CARROLL:

But you don't attribute them to Mr. Williams.

MR. SMITH:

I will say that I am not familiar with them. I don't believe so. But I'm not ready to make an absolute statement.

MR. PRICE:

Mr. Williams just stated to his attorney that he purchased them with his own funds from Daynard's group.

(Off the record.)

MR. CARROLL:

Q. Mr. Williams, you have with you-- I believe you were looking at hearings before the Subcommittee on Health and Environment, dated March 5th, 11th and 12th, 1982. Did anything that you

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found in those proceedings influence you in your decision to remove the documents in question?

A. Yes, sir.

Q. Why don't you tell us what it was.

A. I've done a fairly extensive review of these hearings, as they appeared over the years, starting back in 1964, and I followed the trail of who these people appeared, where they appeared, how they identified themselves, as an affiliate, that they worked for the tobacco company, that they were witnessing for the tobacco company, if they were witnessing, lobbying, which would be the inference, in the legislative way, in many of these hearings.

And I came to the conclusion in my research, outside of Brown & Williamson, as well, that there was ongoing fraud that had been going on for some time, and was continuing, and that my objective was to make it stop.

First of all, it has been proclaimed that these-- the CTR was independent. It was independent of any kind of research influence by the tobacco industry. This is what this says in these documents.

MR. SMITH:

Objection. What documents?

A. The documents from Brown & Williamson

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which we have before me, the ones that you have sent to my counsel, and the documents also in the public domain.

MR. SMITH:

Objection stated. We still haven't identified the documents.

A. Okay. Who were the people who were under the payment or the payroll and how they got paid?

And did they go in a concerted effort to discharge the information to the American public in such a way that it would undercut the Surgeon General's report or the law, more or less the Surgeon General's reports, as there have been several, and was that the purpose?

And did it start with this business up here, and how did CTR become a lobbying group when it was a nonprofit organization?

I mean, I questioned why the IRS would grant the CTR nonprofit status when somebody from this group, which was authorized by these lawyers through the tobacco company, to appear in two performances of duty; one, in a legislative action before Congress or the Senate, speaking against tobacco as something that could harm you; or, two, if, for example, you have a trial and you're calling

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a witness, a witness who has been, over the years, paid substantially.

For example, if you had-- and I know the name probably is not familiar with you, but Dr. Martin Cline, UCLA, is known as a gene researcher. And this goes to the heart of a different kind of witness procurement, so to speak. He's not necessarily in the field of saying tobacco is bad, but if he signs a contract with Brown & Williamson and the other companies, and he says he's not-- he's predisposed to say tobacco is not the cause of any disease.

And then this same Martin Cline is scheduled to appear as a witness in a trial and will appear, presumably, and say, look, I got five million dollars, I got seven million dollars for my research program. I'm a fat cat. I've got a lot of money. And he got it through the lawyers.

But the lawyers call this side visit, coffee and tea, so to speak. We're going to renew your contract, Dr. Cline, but we don't want to see any research. And that's what these documents say from Brown & Williamson. We don't want to see any research, which says to you, if you witness against us, you can't say anything about tobacco. Call it

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anything. Call it alternate causation. It's a genetic problem. Well, what better excuse?

This is followed through as institutional grants. They look good in some way. They even publish them.

However, when this fellow appears in a witness situation, and this guy-- I'll call him a doctor. He's a Ph.D., Harvard. This guy appears in legislative proceedings, either in testimony or as a witness in a printed format. In one of these, such as this hearing before Mr. Waxman, and he is paid through these lawyers, and this is a nonprofit group, and there is no getting around it.

It says here in this document, Addison Yeaman in 1963 is setting up in January of-- no, '66, meeting of counsel, general counsel. This is the committee--

MR. SMITH:

I object to the use of that document on the basis of it's privileged and it not being one of the documents stolen by Mr. Williams.

MR. CARROLL:

Go ahead.

A. Pursuant to requests from general counsel of each of the six-- I'm quoting here-- six

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participating companies. And the Ad Hoc committee submitted seven proposals for specific research projects which, in their view, deserved immediate implementation.

Professor Lucio Severi, $20,000, work on the related relation between lung tumors in animals and isolation.

Now, this gentleman was not paid the money so that he could find something wrong with tobacco.

MR. SMITH:

Object to that comment as unsupported.

MR. CARROLL:

Excuse me, Mr. Williams, before you go on, I would like to have the document that you're referring to marked as Exhibit 22, and I would like for you to testify from that document by reference to Exhibit 22.

(Exhibit 22 was marked.)

MR. SMITH:

Could I see that hearing transcript, please, sir? I just want to know the date of the hearings you're referring to.

THE WITNESS:

'69.

MR. CARROLL:

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Wait a minute. I'm not sure that's true. It's '82.

THE WITNESS:

'82, sorry. It has no relationship to this.

MR. SMITH:

Exhibit 22 is actually a part of the Sarokiu order.

MR. CARROLL:

I understand. I understand.

MR. SMITH:

Well, I would prefer not-- all right. Go ahead.

A. I would like to explain that the first pagination is an attachment saying, if you find any needed corrections or changes enclosed, please note them to the counsel on Thursday, January 6th. Yours truly, Addison Yeaman, A.Y., Happy Christmas or whatever.

This is to all of-- this is to people I recognize as lawyers, so-- and the law department. But--

MR. CARROLL:

Q. Are you referring to Exhibit 22?

A. Yes, sir, Exhibit 22. Geoffrey Brinkman,

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continuing on the following page, which is not the attachment, but a meeting of the general counsel on December 17, 1965, pursuant to the requests of this Ad Hoc committee, to summarize it, was taking action to submit to the SAB, which is another term that I guess I should define, but I don't need to now, which is a part of the Council for Tobacco Research, if not approved and subject will be carried out.

And this is the important part. If the CTR SAB, which is clean as a whistle, doesn't approve it, then we'll carry it out as a special project.

Now, would, therefore, Dr. Cline be a special project? If so, is his purpose in becoming a partner in witnessing for the defense in a case, is his purpose to say that tobacco is harmful? No. He won't find anything. He's going to find the site for cancer.

How did it happen? It happened for other reasons. It didn't happen for tobacco. That's been going on for 40 years. That raised my conscience.

In this document, Number 22, we have a recommendation to give money to Langston, Hiram Langston, M.D., and it's a rather small amount, but Leo Katz, give money to him.

The basis of this is for special

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projects. And I submit that the rest of this document would be from a hearing in 1969. And if you look at it, Number 22, Exhibit 22, shows some of these names. One would do, but Dr. Langston is not witnessing before Congress in 1969 to tell you that it is-- there is any problem with smoking. He's there to witness for the purposes of what Mr. Yeaman's pointing out as special projects.

Again, the question, who took the tax write-off for nonprofit organization? I don't know.

Was he lobbying? Question? These are the things that aroused my curiosity very early on, very early on.

You referred to this text, here. This is from the government publishing, this hearing of the Subcommittee on Health and Environment, Committee on Energy and Commerce, House of Representatives, March 1982.

Part of the Comprehensive Smoking Prevention Education Act, Mr. Waxman, who has-- had been chair of a number of these committees prior to Mr. Blyley taking over, came to a conclusion which was entirely incorrect and based on subterfuge, if not mendacity, my opinion, but it raised my conscience.

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I'm going to quote to you from that text-- and you can check it out by looking at that next and looking at this. This will be an exhibit. This is a conversation in that text which I have copied where Waxman is getting to the truth with Dr. Sterling, Mr. Furst and Dr. Summers.

Q. All right. Now, excuse me, Mr. Williams. Are you about to quote from Congressional testimony and statements made before Congress that you have transcribed there? Is that what you're getting ready to do?

A. That's correct.

Q. And is that one of the things that pricked your conscience and caused you to have a heightened level of conscience, concern about what was going on at Brown & Williamson?

A. Yes, sir.

MR. CARROLL:

We offer that as Exhibit 23, so you can refer to it.

MR. SMITH:

I would note that this is a photocopy of a very small portion of the transcript.

MR. CARROLL:

It is.

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(Exhibit 23 was marked.)

MR. SMITH:

For the record, are these the witness' handwritten notes and highlightings?

MR. CARROLL:

They're not mine. I guess you could ask him that on cross. But I can represent to you that they are not mine.

A. Answer the question?

Q. Yes. Go ahead.

MR. CARROLL:

You're referring to Exhibit 23, correct?

MR. SMITH:

Correct.

A. Exhibit 23 is-- first, it lists the contents. It has the cover page of the-- of the document previously mentioned in hard copy, and lists statements.

And then the pertinent part of my testimony for this deposition refers to the very end of this hearing and involves a conversation between Mr. Waxman, who was head of the Subcommittee on Health and Environment, and he's just heard testimony throughout the three days, and he asked this question. This is Mr. Waxman, quote, to Mr.

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Summers-- I mean, Dr. Summers, Mr. Sterling-- he's actually Dr. Sterling, and Mr. Furst, all of whom appear under the umbrella of the CTR payoff scam.

Q. Special projects, you're referring to?

A. Special projects. With possibly the exception of Dr. Summers, who certainly was involved at that time, in 1982, as a member of the-- a member of the CTR in the capacity of president or head of the CTR, CEO of the CTR, nonprofit organization.

Quote, Mr. Waxman says, "You have been invited to participate in this hearing...", and this is page 539. "You have been invited to participate in this hearing by The Tobacco Institute. They know of your work in this area and your views on the subject and thought it would be important for us to hear those views. May I ask whether any of you have any professional relationship with The Tobacco Institute?"

Dr. Summers: "I do not have any."

Mr. Waxman says: "Dr. Sterling?"

This is Mr. Sterling. "No."

Mr. Waxman: "The answer is no?"

Mr. Fisher: "No, sir."

"Mr. Furst?"

"No, sir."

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Mr. Waxman: "Were any of you compensated for your appearance here this afternoon?"

Dr. Summers: "I have not been and do not expect to be."

Mr. Sterling-- it's actually Dr. Sterling-- "I would expect that my expenses and time spent in preparation of my brief will be compensated."

Dr. Fisher: "Yes, I have the same thing."

Mr. Waxman: "Dr. Furst?"

Mr. Furst: "I will be compensated by the law firm that asked me to appear here today. They will compensate me for my time, just as I will be compensated next week by the EPA, and as I was about two months ago by the National Bureau of Standards. As a consultant, I give opinions. I do work on a time basis."

Mr. Waxman: "You're all independent professionally from The Tobacco Institute, and you're here, if you're compensated at all, as consultants to make a presentation to us?"

Mr. Furst: "Would you repeat that, sir?"

Mr. Waxman: "Pardon?"

Mr. Furst: "Would you mind repeating?"

Mr. Waxman: "I made two comments. Your

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professional activities are independent of The Tobacco Institute; and second, if you are being compensated at all this afternoon, you're here being compensated as consultants to present your testimony on their behalf?"

Dr. Fisher: "That would be fair."

Mr. Furst: "Except, as I pointed out, I have no contacts whatsoever with The Tobacco Institute. It was a law firm that asked me for my opinion, and they said that they would compensate me for my time and expenses for coming here."

And Dr. Summers says, "Compensation only for travel and hotel expenses."

Well, the documents that are here, under the special accounts, show that Dr. Sterling has been on the hook and making a lot of money for a long time, since back when he was a mathematician with the University of Arkansas and at the University of Washington, and now in Canada somewhere, somewhere in the neighborhood of $500,000 and $750,000 in one year, over a period of 30 years.

If this is the truth to Mr. Waxman, a Congressman of the United States-- not only that, but a senior Congressman, then there is a subterfuge here.

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But there is another question that brought me to raise my conscience a little bit higher on this.

First, let's say that they represent The Tobacco Institute. Well, The Tobacco Institute is a registered lobby organization. They're registered as a lobbyist. So if the lawyers are paying for lobbyists, how can they do this through this nonprofit organization, and, at the same time say, we are independent? Remember, it goes back to the contract which was published and read by the American public, and I can guarantee you, I saw it myself when I was a paper boy in 1954.

Now, if Dr. Cline appears, it will be under the influence-- under the influence of site visits, influence. He signed off on contracts-- they're in there-- contracts between the lawyers. And they monitored him just as they monitored everybody who was on the special accounts, these guys.

But most importantly, they were not defensive. I can guarantee you, as a coder, I could never find a document that was a defensive document. Why? Because there is nothing to defend. You cannot say-- You can't say, code this document to defensive

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because, essentially, you're going to find yourself tied into, excuse the term, a prostitution, a brothel, which is essentially paid by the companies.

Now, I don't know anything about what the IRS would do, but if this man sits on my jury, while I am being-- you know, I have a-- or Seltzer, for example, whose specialty was CHD, even though he was an anthropologist.

Coronary heart disease, if Dr. Seltzer sits on, as a witness, against me, and I know that Seltzer has been on the hook by the lawyers for ever the period of time when he was unbelievably, as it may seem, with-- with the Surgeon General's report and was allowed to present it, because, I mean, after that, he became part of the industry, and his advice and consent, but he also was presenting evidence to the young doctors in the '70s and the '60s and saying, there wasn't anything wrong with cigarettes.

And I believe as we continue through the documents, you'll find that the lawyers actually sent Dr. Seltzer to Australia on the eve-- or right at the point of the publication of the Surgeon General's report in 1969, in order to say, there is nothing wrong with smoking cigarettes. It's not going to cause you any damage.

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If this man appears and witnesses against me for the tobacco industry, that kind of brothel, that kind of presentation is deceptive. It's not mendacity. It's a lie. He's been on the hook. So has Martin Cline. They've all been controlled by lawyers, and that is what raised my conscience.

The particular elements of The Tobacco Institute, well, okay, I was paid by lawyers, I can understand that. That makes sense. I assume that the lawyers were Shook, Hardy & Bacon, because they happen to appear on the Shook, Hardy & Bacon log.

If we have Brown & Williamson involved in paying off Shook, Hardy & Bacon to construct science in such a way that you're telling people it's okay to smoke, it's not going to hurt you, it will not cause heart disease, and you're going to put this man on the defense, as a witness, against me, who has gone through bypass surgery, I don't think that's entirely honest. Not only is it honest, but there's a problem when you say you're not with the tobacco industry. If you are not with The Tobacco Institute, who are you with? Who is paying you? Oh, we are just getting paid for-- we're getting paid for our time.

Now, gentlemen, when you look through these documents, you'll find that there is not one of

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these people who are paid for time. They're paid for hundreds of thousands of dollars, and they're paid out of the CTR.

So I'd ask the question, if a nonprofit organization is going to be talking to the jury about what they've been paid off and not recognized-- and, believe me, this has happened before, numerous cases, Brown & Williamson and other people have brought before juries this.

But I think the more important part is that these people were paid essentially through the tobacco companies for the lawyers, extending this kind of thing, the documents that I showed you, to undercut the Surgeon General's report and to show you it's okay to smoke. Now--

MR. HEWES:

Can I look at that Exhibit 23, please?

A. In 1965, there was a hearing to determine whether or not tobacco should be controlled and there should be a label on it. And during the presentations, there were two important things that came out of that. One was a definition of the CTR, which, by then, was the CTR, was the TIRC, which was an independent organization, and that over the years, it's been proclaimed, no matter what, that

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essentially, it's an independent organization. There is no lawyer controlling it. There is no tobacco company controlling research. We allowed them to do the research, no matter what.

In the document, which is a public document, the question comes up as to whether or not the guys who are witnessing there-- and there were, I don't know, 30 or so from the-- where did they come from? I mean, nobody really knew where they came from, but I do. They came from the witness procurement program. They came from Ed Jacob. They were particularly plucked from various places. They were sought out. But did they tell Congress the truth? Did they tell the Senate the truth?

Well, Dr. Carlisle, who was on the other side of the fence, he was questioning the matter. And he came to the conclusion that, perhaps, there was something going on that he didn't quite understand. And some of the people who were testifying there and not representing themselves as tobacco witnesses, were, in effect, causing a situation where you were not telling the truth to Congress. Surprisingly enough, this was in 1965, when we were trying to control tobacco in a way, the Congress was.

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Senator Harkey says on Page 31 in this exhibit-- and this, again, raised my consciousness--

Q. Wait just a minute, Mr. Williams. Let's get the record straight. You're now referring to hearings before the Committee on Commerce in the United States Senate, that took place in, when, 1965?

A. Yes.

MR. CARROLL:

We offer that--

Q. These are transcripts of those public hearings; is that right?

A. Yes.

MR. CARROLL:

We offer that as Exhibit 24.

MR. PRICE:

Is that a complete transcript or a portion of the transcript?

MR. CARROLL:

It's just a portion.

(Exhibit 24 was marked.)

THE WITNESS:

I do have all of the testimony, here.

MR. CARROLL:

Q. What is Exhibit 24? I believe you said

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it's hearings before the Senate.

A. Yes, sir. This was the-- one of the-- this was one of the hearings that were held in the first-- well, actually, it was-- I think it was the second hearing that was held after the Surgeon General's report in 1964. And there were numerous witnesses; however, Senator Harkey asked this question on Page 31 of the S-559 and S-547, Part 1.

Senator Harkey: "May I ask a question?" And he's asking the question of William B. Ober, an M.D. "May I ask a question at this point? Are you connected with the tobacco industry?"

Dr. Ober: "No, sir."

Senator Harkey: "Have you ever been?"

Dr. Ober: "No, sir."

Senator Harkey: "Thank you."

There are a number of--

Q. Well, excuse me. Are you saying that Dr. Ober was, in fact, connected with the tobacco industry? Is that the thought that you're trying to convey to us?

A. Actually, it's pretty clear that he was, but it didn't come about in that hearing. There was some question as to whether or not he was an independent witness.

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Q. Well, do you have proof that he wasn't?

A. Not in 1965.

Q. Did you have proof-- Did you come into the possession of proof that led you to conclude that he wasn't at a later time?

A. Well, if you look-- if you can-- Senator Brewster, in 1967, was invited to appear. And I'll answer the question this way. Senator Brewster was asked to appear at a hearing in 1967. This was two years after the 1965 hearing. And in that document that I've just given you, he states that he questioned whether or not there was any independence in 1965 of these witnesses. Certainly, the appearance was that they were independent.

As a matter of fact, I've got a stack of them here where they all say they were.

Q. All say they were what?

A. Independent of the-- I mean, that they had nothing to do with the tobacco industry, that they were there because they thought there was a problem.

However, in looking at the research of where money is funneled, you find that they were all paid off, in one way or another, and they didn't even come out to the point of saying that they were paid for-- some of them, were paid for later on in the

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future.

There is not one hearing that is before the-- any of the committees that is not found in the various microfiche that would indicate the tobacco industry, through its various funding sources, has not paid for witnesses before Congress, and they have not been identified or they've been identified in such a way as they were to Congressman Waxman in the previous document in 1982.

In other words, what I'm trying to say here, there was two years before the American public and American government knew that these guys were lying to Congress. They were representing the industry. They had been picked up, procured.

As a matter of fact, Ed Jacob went over to England and picked up a man named Mr. Burns. And his testimony appears in the 1965 hearing-- Dr. Burns. He was very much into writing about tobacco. And he was with the Tobacco Research Committee over there, which is the equivalent of the CTR over here. He had him change a couple of things.

And I saw this document, and it aroused my suspicion that, you know, if he does appear as an independent witness, surely, he will be defensive, you know, in some way or other. But this is two

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years, two years before there was anything that was ever identified.

And Congressman Brewster comes out and says, look, I have-- I've sent out some questionnaires. I've asked these people whether or not they got paid to appear before Congress. They all denied-- right here, all deny that they were representing the industry, Brown & Williamson and others, denied it before Congress. It was not true.

Senator Brewster finds this out. However, in defense of, perhaps, that a public document-- do you want me to read Mr. Brewster's--

MR. CARROLL:

Q. Yes. When you refer to Senator Brewster, you're referring to the hearings that took place before the 90th Congress, U.S. Senate Committee on Commerce, August 23rd, 24th, 25th of 1967?

A. That's correct.

Q. And you've got a transcript of part of those hearings?

A. Yes.

Q. And there is a newspaper article out of the New York Times attached. What's the point of that?

A. Okay. That is a document when the-- when

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they--

Q. Well, wait a minute. Is it separate from the hearings or is it part of those hearings?

A. Well, I can deal with it either way.

MR. CARROLL:

Let's offer the hearings first as Exhibit 25.

(Exhibit 25 was marked.)

MR. CARROLL:

Q. And then there is a newspaper article from the New York Times. It does not appear to have a--

A. August 28th, 1967.

MR. CARROLL:

August 28th, 1967. We offer that as Exhibit 26.

(Exhibit 26 was marked.)

A. I think the important thing is, that for two years, nobody knew.

MR. CARROLL:

Q. How did you find out all this stuff?

A. Well, I did my own research. And I was aroused by the fact that whenever I found something, for example, New York Times on microfilm, in this case, I put that together with this, and I said, gee, if these guys are really telling the Congress a lie,

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there must be a good reason for it.

In defense of, I guess, the-- well, the puny defense, but I suppose you could make a lot of it in some way or other. This New York Times article is printed--

Q. You're referring to Exhibit 26, aren't you?

A. Yes, sir, Number 26. The document, itself, brings up certain names, and particularly, there is a statement by David Hardy, a Kansas City lawyer. And as-- it's the same Hardy who was the original Hardy of Shook, Hardy & Bacon, and I believe he has a son who runs the outfit now.

And the remarkable thing about this is, first, it's two years after the fact. Secondly, you had two years in which people started smoking or continued to smoke. Three, it deceived the Congress in a way-- and I can go through every one of these and show you that there is a party who says I didn't, you know. Nobody-- I wasn't paid. I wasn't at all paid.

Now, just as an example, David Hardy defends, and he says, well, shoot, it must have been common knowledge that these people were-- these outstanding scientists came there on their own.

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Well, let me just point out that I recognize a bunch of the names here, for example, Dr. Henry Russek, who testified in 1965 and said he didn't have anything to do with it. Leo Katz, the same--

Q. Didn't have anything to do with what?

A. With the industry. Didn't have anything to do with it.

And then a particular one, which is one of the highest paid industry-- I suppose you'd call him a mathematician turned environmentalist, is Theodore Ted Sterling. Sterling deserves gold because that's what he is. He's made a lot of money. He's made a lot of money. And he's gotten his money through the CTR.

No matter how you look at the CTR, whether you say the CTR is a special project, whether you say it was authorized by the lawyers to defend pending litigation or ongoing litigation for legislative purposes, if it is the CTR, it's nonprofit, and it is the CTR, and it is independent, there is no way of getting around it. You can't have both. You can't have Martin Cline as an institutional character. You can't have Carl Seltzer appearing in Congress and saying, I'm a-- I mean, without declaring that he's a

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lobbyist without having some suspicion as to what they're doing with their money.

Well, they're fronting it. They're funneling the money. First of all, we know that they started off denying that there was any problem. If they had fessed up earlier on, it wouldn't have been a problem.

Witness procurement is an extension of the special projects, whether you call them special projects for the lawyers, four, five special projects, or you're just calling them CTR special projects, or you call them legitimate CTR, it's still the same thing. It's still money that you mean to have either lobbied through a nonprofit organization or put on the witness stand. It is wrong. And that is why I took the documents.

Q. All right. Let me-- if I could, let me ask you two specific questions. Are you telling us that you convinced yourself that Brown & Williamson knew that it was making false claims about the dangers of smoking tobacco?

A. Oh, yes.

Q. Did you ever remove any of these documents that is-- that are the subject of this litigation?

A. Yes, sir.

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Q. Did you ever remove any of them before you became convinced that Brown & Williamson was deceiving the public with respect to the dangers of cigarette smoking?

A. No. I made a decision on this in the-- with the notion that my life, my father's life, other people's lives was-- and my children, et cetera. I know. That's a-- somehow--

Q. Yes. But my question is specific, now. Did you ever remove any of the documents that are the subject of this litigation before that time when you finally convinced yourself that Brown & Williamson knew of the dangers of cigarette smoking and was deceiving the public, in your opinion, about the dangers of cigarette smoking?

A. No. I did not.

Q. All right. I'm sorry.

A. The annals of CTR, and I-- I could submit this whole-- Let me just go ahead and put this in the record as one package.

Q. Do you consider it to be critical to your defense?

A. I do. But it's extensive, and it says, basically, in 1965, these witnesses did not tell the truth. That's what I've got. I'm sorry that it's

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taken so long.

Q. All right. You've handed me a green folder that appears to contain a number of documents. I'm sure there is some duplication in here, Mr. Williams. Is there any duplication?

A. There is. There's probably one or two.

Q. And are these documents you're telling the court that you relied on in making the decision to remove the documents that are the subject of this litigation?

A. Yes, sir.

MR. CARROLL:

All right. We offer the green folder and the documents contained therein in evidence as Exhibit 27.

(Exhibit 27 was marked.)

A. One more--

MR. SMITH:

I'm going to put the exhibit on the folder.

(Off the record.)

A. I want to throw back this to '54. And the purposes of the TRC, which became the CTR, and the publication, the fact that in 1954, they published their contract with the United States and the United

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States Government and the people who smoke. We are going to find a cause and it's going to be an independent.

CTR became the format of this kind of research in 1964. And I'm going to read you the purpose that appears in 1969, which I think was a fairly good definition of what the CTR actually does. There are others. There are-- throughout history of the legislation, exactly what the CTR does. There's always a litany of CTR and the fact that it is independent, and we're just looking for the truth. And that's a document that I would submit.

Q. You've handed me a transcript of testimony before the Committee on Interstate and Foreign Commerce, the House of Representatives, 1969; is that correct?

A. Uh-huh.

MR. CARROLL:

We offer that as Exhibit 28.

(Exhibit 28 was marked.)

A. And I would like to make a correction, too.

MR. CARROLL:

Q. What's your correction?

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A. In the Exhibit 27, this should be included, as well, additional--

Q. More hearings?

A. Yes, sir.

MR. CARROLL:

Let's just make it a separate exhibit.

Q. You've got more hearings in a red folder which you would have preferred to include with Exhibit 27, but which we will, for the record, make as Exhibit 29, which we offer in evidence.

MR. SMITH:

We obviously object to it as being evidence, but you have offered it as an exhibit to the deposition.

MR. CARROLL:

And Exhibit 28-- We will offer as Exhibit 28 the 1969 hearings that I referred to a minute ago.

(Exhibit 29 was marked.)

MR. DURHAM:

What's in Exhibit 29, then?

MR. CARROLL:

29 is the red folder that he wanted to go with the green folder. Does that clear it up?

MR. DURHAM:

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Absolutely.

MR. CARROLL:

Q. Now, with respect to Exhibit 28, I believe that you wanted to refer to testimony from a gentleman who purported to represent the views of a significant segment of the tobacco industry, including Brown & Williamson Tobacco Corporation; is that correct?

A. That's correct.

Q. What is it that you-- what is it about Exhibit 28 that had anything to do with your decision to remove papers of Brown & Williamson Tobacco Corporation?

A. This document goes to the heart of the matter of what the CTR, the Council for Tobacco Research, was intended to do, what it was perpetuated over the years-- and I'm picking 1969 as just one day. It goes all the way back. And similar statements, and the kind of litany, if you look into the history, have been made.

Cullman

This statement is by Joseph P. Coleman, Chairman of the Board of Directors and Chief Executive Officer of Phillip Morris; Chairman, Executive Committee of The Tobacco Institute.

The statement that I would like to bring

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your attention to, in terms of Brown & Williamson, is by Mr. Coleman on Page 548. It says, I'm appearing as a--

Q. I think the document speaks for itself, that he's appearing on behalf of Brown & Williamson, and I was trying to save you from having to read that by the preliminary statement.

A. I'll go to my intention which is to define Mr. Coleman's definition of what the CTR is. It is on Page 550.

First, quote, he says, "The tobacco industry has been, for many years, and it continues to be profoundly conscious of questions raised concerning smoking and health.

In 1954, nearly a decade before publication of the report on smoking and health of the Advisory Committee to the Surgeon General, most of the cigarette manufacturers, as well as a number of organizations, representing growers of leaf tobacco, formed what is now known as the Council for Tobacco Research, USA, to finance independent research relating to tobacco and health.

Its scientific advisory board, composed of eminent and independent medical scientists, has made grants for research totalling over 13 million to some

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300 scientists, in over 150 hospitals, university and research institutes located throughout the country. In addition, the industry has contributed 10 million and placed another eight million to the Educational Research Foundation of the AMA, the American Medical Association, for research relating to tobacco and health.

The foundation has approved grants for research to scores of scientists. I would like at this point to offer copies of the most recent, et cetera, reports, and I respectfully request that they be made part of the record," and he does.

These large sums, Page 551, totalling more than 31 million, have been made available by the industry without any restrictions or qualifications, except that the money should be devoted to research in the smoking and health area.

I believe that encompasses Mr. Coleman's belief and my disbelief in the--

Q. You believe it what?

A. I do not believe that that is the truth, if you have started, in 1954, telling the people you're going to look for the truth. You have a public relations group, called Hill & Knowlton, putting out information to the American government

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and its people and its children, whatever, that this-- there is a question, there is a doubt. You may smoke. You can smoke. Why stop smoking? It will not hurt you.

Tobacco Institute, witness procurement through the lawyers. And there are two parts. If this is the true statement of the Council for Tobacco Research, you can't have a black book where your lawyers from Shook, Hardy & Bacon are counting the silver and sending it out and sending letters out saying, we are going to send Dr. Seltzer to Australia. He needs $10,000, and in addition to that, he needs $70,000.

You can't have Dr. Aviado being set up and under a CTR account as a nonprofit organization, and say, we are going to give him $100,000, and every year he comes up with some good stuff and testifies before Congress or writes a statement before Congress, that this is not a fraud on the American public, done by the lawyers.

I hope that this kind of thing-- not only that, but the fact that these people appear in my trials, if I ever were allowed to have a counterclaim against Brown & Williamson, I would wonder if somebody was not part of the payoff. I don't think

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you will see that now. I don't think you will see this any more because people know it.

And the reason I felt compelled and did so and acted is because I felt very strongly that the kind of mendacity should have been corrected a long time ago.

The next document goes to the documents that were produced in this case in camera, and also are in the context of what the CTR actually represents. And if we have time, I can cover one document or two, if you would--

Q. Is this one of the documents that you removed and that is the subject of this litigation?

A. If you don't mind, I've got two numbered documents with four pages. The numbers of these documents-- and, yes, they are documents that I removed. Document Number 422, Pages 1 and 2, Document Number 425, Pages 1 and 2.

MR. CARROLL:

Okay. I would like to mark Document 422 as Exhibit 30 and Document 425 as Exhibit 31, and offer them as exhibits to your deposition at this time.

MR. SMITH:

You said 31?

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MR. CARROLL:

I think it's 30 and 31. They're stapled together, but I'll mark them separately.

MR. SMITH:

They're the same document.

THE WITNESS:

Are they the same document?

MR. SMITH:

Yes.

MR. CARROLL:

What happened to 425?

MR. SMITH:

They're the same document. They just have a different number on them.

THE WITNESS:

You just numbered them differently. I guess there is a purpose in that. I don't know.

MR. SMITH:

Among documents that were returned to us that were stolen, there were two copies of it in there; therefore, they were numbered as separate documents, although they are the same verbatim document.

MR. DURHAM:

You might as well make it an exhibit.

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MR. CARROLL:

Yes. Make it one exhibit then. Make it Exhibit 30. It will be dated September 29th, 1978. It's a memorandum to C.I. McCarty from E. Pepples, marked "privileged."

(Exhibit 30 was marked.)

MR. CARROLL:

Q. Now, Mr. Williams, why did you take Exhibit 30? What does it demonstrate that impelled you to want it?

A. This is a memorandum that I felt was important to disclose to the American public in a way that could rise to the awareness issue of smoking and the fact that there was a manipulation by the lawyers of the Council for Tobacco Research, which was established and many, many times reported through Congressional testimony and a litany of statements that it was totally independent.

In my mind, this document is an admission of manipulation of research, of manipulation of the Council for Tobacco Research, of-- actually, a compelling argument could be made, I suppose, that it was indicative of a programmed intent not to disclose information to plaintiffs, not to disclose what the CTR actually was, had been, and was continuing to be.

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While I would say, in a way, that a lawyer in a company has a right to write a letter and say, I defend my company, and the lawyer who is looking at this document would say, well, he's got a right to do this, but when you think that you're dealing with the history of such a deception and such a fraud, it's incredible, to me, that a lawyer can even hang up his hat at the corporate headquarters and announce that this is the way we are dealing with the American public.

First, we know, because BAT, our organization knows, that cigarettes not only are harmful, but they kill you. And that, to me, is the important message.

This document says, essentially, that there is a value to the Council for Tobacco Research; that he's been advised, Mr. Pepples, who is head-- one of the counsel there at Brown & Williamson in 1978-- that there are two aspects of value in the CTR. One, direct legal protection from a nonprofit organization, direct legal protection; and, two, we get a bang, we get a political and public relations advantage which accrues to the industry.

If that ain't fraud, I don't know what is. It killed me when I read that.

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Now, continuing with the possibility of discovering something that might be detrimental to the company, it's okay, protect these guys, but don't use the CTR. That's the window to the world. A nonprofit organization is the window to the world.

Well, we-- with respect to the latter, says Mr. Pepples, we might mention the Monroe case-- and I'm not going to quote here, but the Monroe case, which involved Kool cigarettes, and they were obviously in litigation. With respect to that, we might mention that Congressman Moss has called for hearings.

So we're looking at two different things, the things that I was pointing out. These lawyers, okay, we're defending it, but we're using a nonprofit organization and we're using people who we've paid for, through special accounts, funneled through this. You can make a circle and show the lawyers and show how they pumped this through, and took a tax write-off, one way or the other. And I paid for it. You paid for it. And we used it in legislation and we used it in litigation. That is what made me upset.

Quote, Turning to the litigation value, Mr. Monroe propounded in interrogatory to Brown &

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Williamson, asking what we had done to keep abreast of the science concerning our product. Our reply, tells about the ten eminent scientists who serve on the CTR, on the SAB, in an advisory capacity at the CTR, and it tells about the grants which CTR has made over ten years.

Stated another way, our answer says-- our answer to a pending-- a litigation ongoing, our answer says, CTR is our window to the world of smoking and health and research. This avoids the research dilemma presented to a reasonable manufacturer of cigarettes which, on the one hand needs to know the state-of-the-art, and on the other, cannot afford the risk of having in-house work that turns sour.

BAT stands for British American Tobacco. Research is their game. Did Brown & Williamson have any awareness of anything going on? Of course, they did.

But, what do they use when they answer Mr. Monroe? They say, Mr. Monroe, as a litigant, can't come to us and say, we have in our files numerous biological research which says, for example, in 1963, '62, S.N. Green at BAT says this causes cancer. If we got rid of cigarettes, we certainly wouldn't have

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any cancer. Give me a break. Wouldn't you react the same way if you saw that? No.

This is not a defensive document. This is not a litigation matter where, you know, the guy is saying anything, but we're not going to disclose except through our little group, our circle, CTR, B&W, et al, the other companies, Ed Jacob and SHB, Shook, Hardy & Bacon, Covington and Burling.

Going directly to the purposes of legislation, yes, and litigation, pending, okay, but in this case, he's saying to me, Monroe, you can't get our documents because we don't produce any documents because we don't do research.

Gentlemen, there are piles are research. I saw it. As a matter of fact, King & Spalding was assigned research and development during this project phase, and we were aware that King & Spalding had some of it. We had some of it.

And when King & Spalding went before the insurance commissioners or the insurance magistrates in 1988 for the Farmer's hearing, they said, we don't have any research. We don't do biological research.

MR. SMITH:

I would object to that as a misstatement of fact.

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A. It's very clear that the obfuscation which occurred under those years made me aware that something was going on in the way of non-producing, non-disclosing or disclosing in a way which obfuscates the truth.

For example, in that hearing, in one of the hearings in California, S.N. Green, who had already said in 1962, it causes cancer. He was the head of BAT's research group, said, I want to come and testify. I love to.

MR. SMITH:

Object, lack of personal knowledge. He's never talked to Dr. Green.

A. In a public record in California, Mr. Battaglia, who represented the Farmer's Insurance, stated, through one of his lawyers, represented to the court that S.N. Green had determined that he wanted to come forward and be a witness.

And there was an intervention by the part of lawyers from Shook, Hardy & Bacon, and I believe Gordon Smith was one of those who was mentioned in that hearing. This was a matter that was ongoing in 1988 or-- was it '89, Gordon? I don't remember, was it '88 or '89, the Farmer's takeover.

MR. SMITH:

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I don't remember.

MR. CARROLL:

Ladies and gentlemen, we are right close to noon, and I think it's a good time for us to take a break.

MR. SMITH:

Before we do that, I need to make a statement.

I have been quiet for the last hour and a half. This morning has been spent entirely with the witness stalking about the room giving uncontrolled and inappropriate statements that are really not in the nature of testimony. He's dealt with information he didn't have while he was at B&W. He's dealt with documents not stolen and not at issue in this case, documents that relate to other entities that have nothing to do with B&W. He's gone so far as to give opinions on such matters as the False Claims Act and extensive quoting from Congressional testimony. As of 11:30, he was still talking about 1954 matters.

We renew that objection and would inquire of Mr. Carroll whether he intends to continue with this after lunch.

MR. CARROLL:

With all due respect, you're not going to

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dictate the manner in which we defend this lawsuit, and I'm going to continue in the same manner after lunch. I do hope to-- I do hope to be able to get to specific documents which I believe the witness is now turning to. This witness felt that-- this party felt that in order to properly defend himself, he had to give a background, and it is neither my purview nor yours to tell him that he can't.

I hope now that we can turn to specific documents and why he took them because I think that that is the issue in this lawsuit that needs to be dealt with.

MR. SMITH:

Well, I would simply state that he has, indeed, begun talking about specific documents that he has stolen and the testimony is in exactly the same nature as it was earlier.

MR. SMITH:

We'll take a lunch break.

MR. PRICE:

Do you have any idea how long you're going to have this witness on, Jim?

MR. CARROLL:

I sure don't. I sure don't. I wish I could tell you I did, but I can't.

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MR. ROYALS:

Why don't you give us five minutes before we go to lunch, and if it's all right with you, maybe we can give you some idea of how long this witness will be.

MR. SMITH:

That will be very helpful.

(Off the record.)

(Exhibits 31 through 42 were marked.)

MR. CARROLL:

Q. Mr. Williams, when we recessed at lunch, you had begun talking about Exhibit 30 to your deposition. And I believe you were explaining why you considered this document to be important on the issues that were operating on your conscience at the time you removed the documents.

A. Yes, sir.

Q. Does this document mention the organization known as CTR and to which you referred? Look at that paragraph. Let me get over here where I can look on it with you.

A. Yes, it does.

Q. All right. Read the paragraph that I'm pointing to you, please, and tell us why that was important to you, if it was.

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MR. SMITH:

Could you tell, for the record, what paragraph that is?

MR. CARROLL:

Next to the last paragraph on the first page.

A. The point here is the value of having CTR doing work in a non-directed and independent fashion as contrasted with work either in-house or under B&W contract, which if it goes wrong, can become the smoking pistol in a lawsuit. Now--

Q. Why was that important to you?

A. There is an attempt, and a successful one, to use the CTR for the purposes which it was not founded or for which it was not used.

To give you an example, the term, "if it goes wrong," the term that-- that sentence goes directly to the heart of a particular matter which I'm familiar with dealing with a research which was granted by the CTR.

The grantees were, I believe, Becker and Durbin, and they had a study for a glycoprotein implicating the restricted arteries in coronary heart disease, glycoprotein being the-- being produced by the tobacco leaf in the burning stage.

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And the discovery was made that the Council for Tobacco Research had, in fact, funded the study. And when the-- when this came to the attention of the president of the Council for Tobacco Research, he informed Brown & Williamson and the head of Shook, Hardy & Bacon's product or research group lawyers, and said that he was embarrassed that-- essentially that this had happened, but he couldn't take away the fact that, in spite of the fact that we had done site visits and made sure that he wasn't going to come up with-- they weren't going to come up with anything that would be detrimental to them, he had discovered a glycoprotein theory which was very detrimental and the CTR had funded it.

MR. SMITH:

Excuse me. Are we still talking about this document?

THE WITNESS:

Yes, sir.

MR. SMITH:

Is there another copy of this document? I would kind of like to look along.

MR. CARROLL:

I would have thought you had a copy, but we'll get you one.

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THE WITNESS:

You can have this copy.

MR. SMITH:

Okay.

A. Could I go ahead?

MR. CARROLL:

Q. Sure.

A. The CTR, being an independent organization, as it was proclaimed, was funneling information to Shook, Hardy & Bacon, which said, there is-- there is a research organization that's gone sour, a research project that's gone sour. They have found a problem in the glycoprotein.

And to that end, they went to-- excuse me. They went to the heart of the matter and said, we've got to do something about this, essentially.

And so you have-- you have this CTR president finding a problem with the CTR-funded project, on which the publication is stamped, "funded by CTR," and you can't do anything about it, informs Shook, Hardy & Bacon-- the president of CTR informs Shook, Hardy, Bacon, whoops, we've got a problem, so what do we do?

Well, Shook, Hardy & Bacon, manages to procure a scientist by the name of Rodger Bick, and

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in 1982, Rodger Bick writes a-- one of the statements, along with a number of other people, and he appears on Page 568--

MR. SMITH:

Let me interpose an objection. You asked a question this time, as opposed to this morning, and we are way afield from the question. I thought we were going to get a little more directed--

A. My question-- my answer to this question is, if it goes wrong, what do we do? And what they did was, they took Rodger Bick, the lawyers for Shook, Hardy & Bacon. They had him do a study. They funded it. The tobacco industry funded it, wrote it off, one way or another, I assume, through the taxes, and then applied the glycoprotein theory as totally invalid.

So they took the CTR original study by Durbin and Beck. And what I'm trying to point out, here, is the fact that if it goes wrong, which the Durbin and Becker study did go wrong, for them, for the industry, then they served up the lawyers with the communication network that was set up so they could form a shield and use the CTR to correct it.

And Rodger Beck appears in this particular section. I believe it's the-- as the person who

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disputes the glycoprotein theory as causative factor and--

MR. SMITH:

May I see that?

A. In the-- in the--

MR. SMITH:

Page 356, you said?

THE WITNESS:

I don't know. You look in the contents. You can see. I have a copy, if it-- if this is not correct, I have a copy.

MR. CARROLL:

Q. Mr. Williams, was it your belief, when you read this, that this memo evidenced an effort by Brown & Williamson to avoid being directly involved in research that could be used against it in litigation?

A. Yes, sir.

Q. And was it your belief at the time this document was removed that CTR was being used as a shield for work, research work that was being performed at the instigation of the tobacco industry?

A. Yes.

Q. On Page 2, there is a statement: "The

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mere fact that CTR now has over two decades and 46 million dollars worth of experience behind it shows that there is a real controversy here and that the industry is in it for the long haul, at least until real answers are found to take the place of Hammond's statistical guesswork."

Do you know, from your information that you have developed, what the reference to Hammond's statistical guesswork is?

A. Well, the basic defense to the Hammond study, as to any statistical layout, started with the Surgeon General's report in 1964. The battle, so to speak, of controversy-- there is a controversy; there is always going to be doubt-- was set up along, well, if you've got statistics, I mean, that's not good enough because anybody can do statistics.

So, in other words, statistics aren't good enough. What we have to have is guinea pigs. And, of course, we had an enormous human laboratory out there with a lot of lab rats.

The point being that the statistical evidence was not a sufficient one for the tobacco industry to accept, and Hammond, assuming the statistical guesswork here is a-- just a mere play on words, is a defense for the industry. The millions

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of dollars that they pump in, as they refer to here, are merely to-- my interpretation, and I think the logical interpretation, is to use the CTR to perpetuate the controversy, of which there was no controversy, except in the minds of the tobacco lawyers.

Q. Do you know who Hammond was?

A. Yes. I know him.

Q. Who was Hammond?

A. He was a scientist involved in the early '50s work on determining causation. I don't know that much about him, but he was in a statistical-- well, he worked in cancer causation.

Q. Obviously, his opinions were not looked with favor upon by the author of this.

A. No. No. It was--

Q. All right. The last paragraph says, "This history of staying power and steadiness encourages good scientists to respond favorably to the industry when we ask them to tackle long-term, tough assignments. A corollary is that without CTR, the government and the American Cancer Society would be the only game in town."

A. Uh-huh.

Q. Is that one of the statements that you

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considered when you were deciding that you were going to remove this document?

A. Well, I'm still incensed by the notion that you can actually create science and debate a consensus, which has already been formed, was certainly formed in England and the United States. And creating doubt, creating controversy, this kind of thing is exactly what the lawyers were doing with the pump work from the tobacco scientists on the in-house and the tobacco lawyers in-house.

I particularly refer to this as a thiefdom, and they had created and were creating a thiefdom of basically commissioned science. Without doubt, there was a consensus at this point in time and everybody in the scientific community knew it. The only doubt were the people who had been produced by the industry through the CTR.

Q. This last paragraph also has a statement that I would ask you if you can tell me what it means. It says, "In that situation, the strong-minded scientist, willing to deviate from the party line of the Mary Laskers of this world, would have no place to go."

First, who is Mary Lasker?

A. I don't know Mary Lasker's name. That is

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probably someone with-- I can't give you an explanation. I don't know her name.

Q. And then it says, "As long as there is a CTR, they can and do have someplace to bring their applications."

A. Well, if you've got bad science and bad scientists-- it's just a-- it's kind of a euphemism for how--

MR. SMITH:

Objection to this witness trying to say what somebody meant when they wrote a document. If he considered it before he took the documents, that's one thing. But for him to surmise and guess at what someone meant when they wrote a document is objectionable.

MR. CARROLL:

Q. Go ahead.

A. It is common knowledge, in my estimate of what I determined to be euphemistic in the sense that the language of the lawyers was always-- and I think it was a joke to many people, and there was always an understatement or a statement which was meant to obfuscate what your purpose was.

In other words, if you had an American Cancer Society and you were targeting them to

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undercut what they were doing, you would go out there and challenge them. And this statement, I can say this is nothing but-- it was a reasonable assumption for me to make then and now. It's the same. Even more so. That using the CTR, as this sense, is kind of like putting money in the pockets of science, scientists who will do anything and they did. They created science. So--

Q. All right. Now, this memorandum is dated September the 29th, 1978, and it is to Mr. C.I. McCarty, from Mr. E. Pepples.

A. Uh-huh.

Q. Do you know who Mr. E. Pepples is or was?

A. Attorney at Brown & Williamson.

Q. Was he in-house or--

A. In-house, yes.

Q. And who was Mr. C.I. McCarty?

A. I believe in '78, Mr. McCarty was a president of Brown & Williamson.

Q. So this correspondence, this memorandum, whatever it may have meant, was directed to the very highest authority at Brown & Williamson?

A. That's correct.

Q. Exhibit 31, please, sir, is that one of the documents which you removed and that is the

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subject of this litigation?

A. Yes, sir.

Q. Who is it addressed to?

A. It is addressed to McCormick of BAT, from-- and McCormick was a number one, I believe, a head or a CEO of BAT. Although I believe that-- no, he's the lawyer. McCormick is the lawyer.

Q. The date on this document is June 28th, 1963, isn't it?

A. Yes, sir.

Q. And you said you removed it. What that is contained in that document did you consider to make it one that you would want to remove?

A. Well, it is part of a set of documents, but this particular document mentions both Griffith, the Surgeon General, Battelle and TIRC, Brown & Williamson, of course. And it is from-- oh, it mentions, also, a Jacob. And the president of Brown & Williamson at the time, I believe, is Ed Finch.

These parties were involved in a-- of the early stages of the development of the Surgeon General's final report.

In the summer of 1963, the--

Q. Well, excuse me for interrupting you just a moment, but let me ask you this. The first

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paragraph of this letter says that a gentleman named Bill Cutchins has asked the author of this to reply to a note of 19th June, advising that Todd of TRC, on that day, sent copies of the Battelle nicotine report to TIRC.

A. Uh-huh.

Q. Do you know who Todd was?

A. Yes. It's Geoffrey Todd, with a G, of the TRC. TRC was the Tobacco Research Council.

Q. Yes. You told us about that this morning.

MR. SMITH:

No, he didn't. It's a totally different organization, Jim.

A. Well, it is a different organization. I'll agree. And, truly, Geoffrey Todd was, I think, the acting head of TRC, which was a British research group, I believe first funded by Parliament.

And what this says is, that Geoffrey Todd of the British research group, which was not related to BAT, but BAT had some things to do with it, had sent copies of a nicotine study from Battelle Laboratories, which is a research group, to the Tobacco Industry Research Council, which you understand to be the-- at this point in time, had not

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become CTR, but was the same.

Now, with that in mind, the question arose as to whether or not the Battelle nicotine report really should have gotten to the TIRC, was it meant to have gone. There seems to be some concern in this document--

MR. SMITH:

I object to the witness characterizing the document. He certainly-- that has nothing to do with the case. If you want to ask him, as you have, whether this is something he looked at and considered on the basis-- for the basis of taking it, that's one thing, but he can't put his mind into the mind of other people who are writing documents.

MR. CARROLL:

I would think that would be an objection that would be properly reserved under the stipulation, but I'm not trying to get into an argument with you about that.

Q. You can go ahead and answer the question, please, sir.

A. Well, this is one of the documents--

MR. SMITH:

Jim, I think you're right. I think it is reserved. And I will try not to make them, but

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occasionally, I just can't help myself.

A. Well, first of all, from the point of view of the rest of the document, Griffith's work dealt in a set of documents. We find that the Surgeon General is preparing-- just by the dates, you know that the Surgeon General report was actually completed and in the printing stages at the end of the year. And it was released on January 11th, 1964. That was the first Surgeon General's report.

Brown & Williamson had input into that report and they were allowed to submit various information that would be a contribution to that report because they were representing or part of the panel, so to speak, of the first Surgeon General's report.

I think the problem with the-- that I see in this letter is-- and saw and continue to see is that Griffith had developed a filter or a new product, and that Battelle was doing nicotine studies that went to the heart of the issue of is nicotine addicting, and Battelle finds in the report, which is perhaps the Hippo Studies.

What should we do with this? Should we give this to the Surgeon General? Should we not? Should we give this to-- and the second to last

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paragraph states, no, we'll give it to Ed Jacob and let him to decide whether to disclose-- B&W should make of this.

And I think the overall reading of this, top to bottom, is that the TRC has gotten hold of this. Maybe they shouldn't have hold of it.

MR. SMITH:

Is that the TRC or the TIRC?

A. TIRC. Todd, Geoffrey Todd, has taken it on his own and sent the Battelle nicotine report, which was a BAT report on nicotine and showing how addictive it was in 1963. And I think this goes into the hands of Ed Jacob. "Happily, Ed Jacob will be with us on Tuesday to give us the benefit of his particular and special knowledge of the committee. Its reports..." et cetera, in deciding what disclosures B&W should make of Griffith's work to the Surgeon General Committee, and if such disclosure is to be made, whether it should be made through the independent-- through the TIRC or direct by B&W. The fact that the Battelle report is now in TIRC's hands undoubtedly will have some effect on that decision.

This says, very clearly, that TIRC has a research report authorized by BAT, sent from another party, Todd, of TRC, and we're going to stick it in

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the hands of lawyer Ed Jacob, who, perhaps, is going to make a decision to either give it to the Surgeon General, which would be the right thing to do. Look, we found that nicotine is addicting. Maybe there is some benefits in that.

If you read-- of course, I'm interpolating, but I will tell you what the Surgeon General's report, by omission, there is no reference to the Todd report, to this report. There is no reference to the Battelle report in the Surgeon General's report which was issued in January 11th, 1963.

So, obviously, it stated the TIRC. It did not get to the public, and the public, therefore, was deceived.

Q. So, I take it from your last statement that one of the concerns that you had about this document was that there was evidence available that could have been contained in the Surgeon General's report but was not released by BAT.

A. Yes. Or by Brown & Williamson.

Q. Yes, or Brown & Williamson. And I take it that whether you were right or whether you were wrong in the conclusion, you concluded that the reason it wasn't released was because the lawyers kept it from

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being released; is that what you're trying to say?

A. That's correct.

Q. And that's one of the things that gave you concern about this report and why you thought it was important?

A. Sure.

MR. CARROLL:

We offer that as the next exhibit. It will be 31.

Q. 32, Exhibit 32 is of even date with Exhibit 33. And I probably should have made a-- I probably should have made them in reverse. Look at Exhibit 33 and Exhibit 32, if you would, please, sir.

A. Okay.

Q. Does Exhibit 32--

A. Let me identify some of these people in here.

Q. Okay. Good. You're referring to Exhibit 32 now?

A. Yes. Let's take that one. The-- Mr. McCormick was president of, I believe BAT. But this is from Addison Yeaman. It's attention to-- no. McCormick is the lawyer and the cable is to Yeaman.

Q. You mean it's from Yeaman?

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A. From Yeaman.

Q. Who is Yeaman?

A. He's a lawyer with Brown & Williamson in 1963. Finch is the president of Brown & Williamson, I think, at the time. Wade and Griffith were in the RD&E.

I think the important name here is Hoyt.

Q. "Prior to receipt of your telex July 3rd, Hoyt of TIRC agreed to withhold disclosure..."

A. Right.

Q. "...Battelle report to the members of SAB." Is that what you're talking about?

A. Right. Well, the interesting thing, to me, in this is this-- Hoyt was actually an employee of Hill & Knowlton. He was paid by Hill & Knowlton, but he was working for TIRC, which was, as we know, an independent organization by the tobacco companies' declaration of 1954.

Mr. Hoyt was a-- you know, basically in charge of saying what could or could not come in. And this letter-- this telex says that Hoyt, of Hill & Knowlton, public relations firm, is withholding the disclosure of a nicotine report which would have been very important to the Surgeon General.

Mr. Finch, who is president of Brown &

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Williamson, agrees. Well, we shouldn't disclose this to the Surgeon General. That's undesirable and continuation is bad because there are some implications regarding cardiovascular disorders.

MR. SMITH:

Can I clarify one thing? You keep saying nicotine report, and you said Hippo at one point. Is that what you're talking about?

THE WITNESS:

No. We're talking about this document here.

MR. SMITH:

But I mean, when you use "nicotine report" in your testimony, do you mean Hippo report?

THE WITNESS:

It could be. I don't know. You might enlighten me on that.

A. I left off with cardiovascular disorder. So awareness is an issue in the sense that they were aware that this report-- and this is what it says to me-- was-- had some implications that were detrimental to the tobacco industry with cardiovascular disorders. And that they were going to withhold it. And the person withholding it is actually a paid employee of Hill & Knowlton, Hoyt.

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And so that's not only disclosure from the-- or failure to disclose to the American public regarding the-- it's just a-- it's just an audacious thing to--

Q. Well, that's the way it struck you, anyway.

A. Yes. To maintain this kind of-- first of all, you're in the Surgeon General's committee. You're right there on the front page. You have the effort. You should disclose it. You have the duty to disclose it and you don't. A Surgeon General did not get the information. And all the big players are involved, here.

Q. Exhibit 34 is the meaningless one. Exhibit 35, is that one of the documents which you took?

A. Uh-huh. Yes.

Q. What is that document, if you would? It appears to be addressed to Mr. Yeaman.

A. Addison Yeaman, who was the general counsel at Brown & Williamson from, I would say, Tony McCormick. And it is dated July 4th, 1963, which predates the Surgeon General's report.

Again, this is in the context of what Sir Charles Ellis of BAT, his input. "On receipt of your letter of the 9th, I have talked with Sir Charles and

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developed..."

MR. SMITH:

She can't take this down, Mr. Williams.

THE WITNESS:

I am just trying to read it.

MR. SMITH:

Either read it to yourself or--

MR. CARROLL:

Well, Gordon, with all due respect, she hasn't complained and I-- I recognize that it's a little disconcerting for him to be reading out loud, but--

MR. SMITH:

I have no objection to that.

MR. CARROLL:

I would appreciate it if you wouldn't try to instruct him what to do, at least until we have a complaint from the lady that's having to write it down because it does interrupt the train of thought.

Q. Read it to yourself and--

A. Or you can ask me.

Q. Well, first of all, what's the date of this document?

A. July 1963.

Q. 4th of July, 1963?

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A. Right.

Q. And it's from British American Tobacco Company, Limited?

A. Uh-huh.

Q. And it's addressed to Mr. A.Y. Yeaman.

A. Uh-huh.

Q. In Louisville.

A. Uh-huh.

Q. I guess that establishes conclusively that the people that generated this document were not celebrating the 4th of July.

What is the context of this letter?

A. "Your letter, 18th June, TRC consultants, scientists advise it is too early to submit Battelle report to Surgeon General's committee, but we think they will agree that continuation by Battelle of this report will be useful.

Sir Charles Ellis, convinced of beneficial effects of nicotine but agrees further investigation desirable before publication. And please forward to..." I can't read this, TRC.

MR. CARROLL:

Q. Please-- does that say, please inform--

A. Inform.

Q. -- TIRC?

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A. TIRC, right, yes.

Q. Well, now, this is addressed to Mr. Yeaman?

A. Right, the lawyer at Brown & Williamson, from--

Q. And from whom?

A. It looks like Tony, which is-- I think Tony McCormick, which would be a lawyer at Millbank, Breshmeyer.

Q. And he is telling Mr. Yeaman to inform the TIRC that it is too early to submit the Battelle report?

A. Yes. And Charles Ellis was a big advocate that there were beneficial effects of nicotine, e.g., weight loss, and the fact that it was addictive. And he made no punches with that, pulled no punches with that. He knew that. He liked the idea.

The British had quite a different view of this than the United States lawyers.

Q. This also has on it a P.S. "Since dictating this, I have received your telex message and we look forward to reading your comprehensive note." Do you recall ever seeing the telex message or the comprehensive note, sir?

A. I don't know exactly to what that refers.

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Q. We offer Exhibit 35.

Exhibit 36 is dated November 9th, 1979. Is that one of the documents which you took, sir?

A. Yes.

MR. SMITH:

What was that date, again? I'm sorry.

MR. CARROLL:

November 9, 1979.

Q. What is that particular document, sir?

A. This is a main-- this is a document which specifically spells out terms for handling the mother company's scientific documents in a way that can be kept out of discovery from plaintiffs suing Brown & Williamson.

There is no question in my mind or in anyone's, I guess, that Mr. Wells is-- who is a lawyer, is putting into place a cover, so to speak, so that Gil Orstell, who is a scientist with Brown & Williamson, can manage the BAT scientific reports.

It's important to note that Brown & Williamson, for many, many decades, declared that they did no biological research.

Q. Did they?

A. Yes, sir. And that they had a pooling and a sharing of costs, and a use of the smoking and

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health research, which came from all over the world, actually, but particularly, with their mother company.

Q. Their mother company being--

A. BAT and its affiliates. This would be-- the whole document, I think, is more in line with structuring a way so that what we've paid for, we don't get, so that we don't have to-- may I take a look?

Q. Yes.

A. To disclose this to plaintiffs.

One David Schechter, who is a lawyer with Brown & Williamson, is mentioned here. It's a means of routing the documents. And his recommendation-- it's a lawyer's recommendation-- is that all BAT scientific reports be shipped directly to Dr. Esterle. Under a formal agreement, Dr. Esterle was assigned to be your agent for the acquisition of scientific materials in anticipation of litigation in 1979.

Dr. Esterle would separate the reports which were relevant to smoking and health-- here again is the euphemism, relevant to smoking and health, which means, is it going to hurt us or not; or otherwise, sensitive is another euphemism.

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Sensitive in the sense that if it's going to hurt us, we don't-- we want to handle it properly so that it doesn't get into the plaintiffs' hands. And that's exactly the way this reads. For special handling. That's exactly what it says, for special handling. And it even mentions--

Q. Excuse me for interrupting you. I'm curious about what you just read. It said, I recommend a second alternative, which would be that all BAT scientific reports be shipped directly to Dr. Esterle under a formal arrangement that Dr. Esterle was assigned to be your agent for the acquisition of scientific reports which were relevant to smoking and health or otherwise sensitive for special handling-- I'm sorry. All BAT-- he recommends that all BAT scientific reports be shipped directly to Dr. Esterle under a formal arrangement, that Dr. Esterle was assigned to your agent for the acquisition of scientific materials in anticipation of litigation.

When you decided to remove this document and eventually to disclose it, did you read that to mean that the lawyers were setting up a system that all BAT scientific reports would be treated as though they were generated in anticipation of litigation?

A. In the sense that Dr. Esterle was a

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scientist and that this is a recommendation from a lawyer, my impression was that they were trying to create a cover-up for anything that might be detrimental and that Dr. Esterle could be the one to ferret out, flush out the ones that were not helpful, I think is the term, and the ones that might be too hot to handle.

Q. Yes. But specifically to the question that I asked you, did you read this memo when you were trying to decide whether it was important or not, as setting up a situation or recommending that a situation be set up or system be set up where all scientific reports, whether in anticipation of litigation or not, would be treated as if they had been prepared in anticipation of litigation?

A. Yes. Right. And they did have a cost-sharing agreement for many, many years, going back into the '60s, early '60s, and that would, you know, preempt any possibility of them doing it on their own. They shared the cost with BAT, and so they were paying for-- they were paying for this biological research, much of which showed that cancer and smoking, carbon monoxide causes disease, et cetera. And screening projects was ultimate in that sense, ultimate objective, I think.

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Q. We really don't have-- we offer Exhibit 3[illegible] in evidence.

We don't have to really get into the details of this-- these next two documents.

MR. SMITH:

I'm sorry. You offered that into evidence, and I object to it being in evidence. I agree that it can be marked as a deposition exhibit.

(Off the record.)

MR. CARROLL:

Q. If you would, look at Exhibits 37 and 38, the Stallone letters.

A. Uh-huh.

Q. One of those documents is dated April 28th, 1983.

A. Uh-huh.

Q. And it's from Sylvester-- it purports to be from Sylvester Stallone to Bob Kovotoff of Associated Film Promotion.

And it basically says, I will use Brown & Williamson tobacco products in some films, doesn't it?

A. Right.

Q. What was Associated Film Promotion?

A. It was a product placement-- special

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product placement organization formed to put products in movies.

Q. Is it limited to the tobacco industry or to other--

A. No, no. The-- Sony--

Q. Ford, whatever.

A. Pepsi, whatever. For a price, you get-- you get a product in a movie, and the kids see it, and when the kids see it, they want to go out and buy it. It's like an endorsement.

In this particular letter, however, you have what is called a special placement because you're dealing with a star. In 1983, Sylvester Stallone was at the height of his career, and, well, he hasn't really gone down now. And if he used anything in his movies, that had an influence on children.

And at the time, and now, you have a majority of films that are directed-- that are attended by children under a certain age. Anyone who had star representation-- it didn't matter if it's Brown & Williamson or somebody else's product, anything that lent itself to a socially acceptable level of smoking in movies, which eventually get into the video market and then eventually get into the

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home, et cetera, is very important because the very theory of the tobacco industry knows and has stated in position papers that there is one way that we can increase our population of young smokers, and that is through star endorsement. And that is why the-- Joe Camel doesn't particularly bother me so much as seeing a young actress smoking in a movie because it directly goes to their position paper on this.

And, secondly, it rises to the level of illegality. And I don't believe it means-- it is meant to be circumventing the law. There is a law. In 1969, the amended cigarette law-- I think it's 1335 et seq., whereby they-- the amendment and the history of the legislation is intended to get kids off of watching star endorsement in television programs. And the law is very specific. It says, no tobacco product-- no cigarette product may be used in any television program or radio, any media which is under the jurisdiction of the FTC. No advertisement.

Now, this is particularly interesting to me because in 1988 and '89, I was working at Brown & Williamson or for it at Wyatt, Tarrant & Combs, and I became very apparent-- very aware of this as an issue because Congressman Luken had, at that time, begun

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hearings. And it was a little bit after that that I discovered that-- and I had collected a number of these documents, which led me to believe that there was no question that they were advertising and continue to do so in the movies.

The point is, they had a hearing, and we had a law call from Brown & Williamson's lawyers, and asked to have some documents sent over for this. I was particularly interested in this topic and I knew where documents were for this particular document pull. And it was apparently in request to the-- to the-- to Congressman Luken's hearing, which was called, Tobacco Issues. And I said I knew where these documents were, and I was more or less told to go chase a rabbit or something.

But it was interesting to me that, apparently, they did not want to find them. I later looked in the Freedom of Information Act and discovered that, through my inquiry, that Brown & Williamson had been requested to produce information concerning this, and they did not.

Q. All right. Excuse me for interrupting you. Is this a fair summary of what you just said about Exhibit 37? You pulled Exhibit 37 because it indicated to you that Brown & Williamson was offering

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its products as advertisement in movies, starring Sylvester Stallone, or he had agreed to use them in movies starring him, and you thought that that was illegal?

A. Oh, I knew it was and the lawyers thought so too.

Q. And that's one of the reasons that you took it?

A. Oh, yes.

Q. And Exhibit 38 appears to be a follow-up to--

We offer Exhibit 37 in evidence.

Exhibit 38 appears to be a follow-up to Exhibit 37, addressed to Stallone, by senior VP of Associated Film Promotions on June 14th, 1983.

Now, I want to ask you to try to be as specific as you can. It appears to me that this memorializes an understanding that Brown & Williamson Tobacco Corporation products are to be used in five films.

A. Yes. Right. Stallone, yes.

Q. Which are specifically named.

A. Yes.

Q. What are they?

A. "Rhinestone Cowboy," "Godfather III,"

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"Rambo," "50/50," and "Rocky IV."

Q. "Rocky IV?"

A. "Rocky IV."

Q. And could we succinctly summarize why you took this document out by saying the same reasons that you took Exhibit 37 out?

A. Yes.

MR. CARROLL:

We offer that as an exhibit to his testimony.

Q. Now, Exhibit 39 is a letter dated October the 25th, 1984, addressed to M.A. Morini, Esquire, at BAT, from Brown & Williamson Tobacco Corporation. It is signed by whom?

A. Kendrick.

Q. Who is Kendrick?

A. Kendrick J. Wells, who was a lawyer at Brown & Williamson.

Q. Do you recognize his signature?

A. Yes.

Q. And copies of this go to E.P. Pepples and I.W. Hughes, a blind copy to I.W. Hughes?

A. Hughes was the president of Brown & Williamson, and Pepples is the lawyer.

Q. With respect to Exhibit 39, what was it

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about Exhibit 39 that caused you to believe that it would be appropriate for you to remove it?

A. Well, at the time, Parliament was considering raising taxes, and the-- one of the issues was that Dr. Blackman had put out a paper to-- he had to put a position paper before Parliament. And it was variously titled, but it was Blackman's paper, Controversy of Smoking and Health.

The fact-- some facts and anomalies. The title-- this is a revised titular reference, here. Because the essential elements of this were altered by the Brown & Williamson lawyer, Kendrick Wells.

Q. In what way?

A. Well, particularly--

Q. Or ways.

A. When he found something to-- that would be hot over here, in terms of a fact witness, someone who could say that there was a problem with pulmonary disease and, in this case, Number 31, which I think is his correction-- he's not really correcting, but it's-- I believe this is the page, these are the pages in which he is specifically pointing out what he wants to change.

Q. Well, what is he changing in the first place?

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A. He's changing anything that would be damaging to the litigation atmosphere and the landscape of American litigation.

Q. Anything that would be damaging in what?

A. I'm sorry?

Q. He seems to be referring to a document in here that needs to be changed.

A. Oh, that was the-- there was a Blackman-- that was the position paper which eventually ended up in Parliament as the position's paper on smoking and health for Parliament to make a decision about taxing. And it ended up as this being the title; however, it went through several drafts. As a matter of fact, I don't think they ever sent the copies over. They actually hand-delivered the copies over because this is being written, rewritten by an American lawyer.

In other words, the American lawyer is rewriting for the mother company their smoking and health policy. That was wrong to me. They had a position-- the British people had a position that you have to come out and be up front. And they took that position from the first day. They knew that-- for example, nobody-- there was a consensus in Great Britain--

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MR. SMITH:

We object. There is no question pending.

MR. CARROLL:

Q. You were explaining your answer. You can go ahead.

A. There was a consensus in Great Britain and the scientific community, scientific and medical community that smoking causes diseases. They didn't have the same problems in product liability that we have over here; hence, the lawyers with the consulting lawyers outside the company became very aware of anything that got through BAT to Brown & Williamson could be exposed to litigation over here.

And one thing to disclaim was that there was any problem and that they had done biological research. On up into the '80s, the late '80s, they were saying, no, we don't do biological research. We don't do any of this.

MR. CARROLL:

Q. Okay. That's established. It is your testimony that that is what was being done, but with specific reference to this document, is it fair to say that what bothered you about this document was that American lawyers were redoing things to tailor reports and that sort of thing to American

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litigation? Is that what you're saying?

A. Right. And we are not talking about errata. We are talking about actually changing the landscape of the document, itself.

Q. Changing the substance?

A. The substance, getting rid of the damage. Getting rid of the truth.

Q. Well, isn't that what lawyers are supposed to do? Why did that bother you so much?

A. I-- I-- I have a very different standard. I think that this particular document reflects a difference of views between a group of scientists who had a consensus many, many years ago, and the law department, which was cohesive in the sense that it-- all the lawyers were working together in the network, and they didn't want to accept what Mr. Blackman was putting down, and so through the lawyers, they managed to put into Parliament a published work which was entirely changed. In other words, it wasn't an honest appraisal for the British of what was going on. It was Americans interpreting for the British, and American lawyers, at that. It offends me. And it's also-- well--

Q. It's also what?

A. Well, it strikes me as being a fraud.

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Q. That's the way you felt about it when you took it?

A. That's the way I feel about it now and that's the way I felt about it then.

MR. CARROLL:

We offer Exhibit 39 in evidence.

Q. Exhibit 40 is marked as confidential and it appears to be a-- it appears to say, A Tentative Hypothesis of Nicotine Addiction for the British/American Tobacco Company, Limited, by C somebody and O somebody. Why did you take that one?

A. Well, because it is the state-of-the-art and it still maintains-- it still is the state-of-the-art, some 20 years, 30 years beyond for the addiction properties of nicotine. And it was authorized and it was paid for by Brown & Williamson and BAT, and it is the confirmation of Sir Charles Ellis' view that there are benefits in nicotine. And, essentially, it was like a tranquilizer. And this is together with the project called Hippo, which is a mad hatter. These are all projects which had to do with nicotine. And the last page deals with the British researchers involved.

Q. Why did you remove Exhibit 40?

A. This document is incredible in the sense

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that it represents an early recognition and awareness of addiction much, much earlier than Dr. Koop's final analysis in 1988, from '63 to 1988. That's a long time. And they were aware-- this was the state-of-the-art, and it still remains the state-of-the-art. This is not--

Q. They were aware of what?

A. That nicotine is addictive.

Q. And is this one of the documents that you looked at that you testified about earlier this morning that convinced you that Brown & Williamson knew that nicotine was addictive while they were saying that it wasn't?

A. Yes.

Q. Is that one of the reasons that you took it?

A. Yes, sir.

MR. CARROLL:

We offer Exhibit 40 in evidence.

Q. Exhibit 41, what is that?

Do you want to take a break? You sighed as though you might want to take a break. If you do, we can take a break.

A. No. That's okay.

Q. The document is dated June 16th, 1979,

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isn't it?

A. Uh-huh. Well, first of all, the names Pepples and Kendrick Wells are at the top. It deals with the policy and a procedure, and it deals with the scientific aspect of the business. Dr. Esterle is mentioned. Dr. Hughes is mentioned. They're both scientists at Brown & Williamson. Jim Rosene is also a scientist at Brown & Williamson.

And then it gets to a code word, which is the JANUS material, and the JANUS material is something of a long-term study of just how effective cigarette smoke is in causing various diseases, particularly cancer.

The work that was done then was done at South Hampton, and it goes to the issue of awareness. Everybody is getting the same information that one is-- that Hamburg and Austria are getting material, and they're all getting the same material. And continued law department control, the last paragraph, is essential for the best argument for privilege. Lawyers are not scientists.

Q. All right. This has J.K.W. at the bottom of it. Whose initials are those?

A. J. Kendrick Wells.

Q. Who was--

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A. He was, in 1979, the in-house lawyer at Brown & Williamson, and I think he was in charge of-- I don't know, maybe-- it certainly wasn't patents, I know.

Let me say one more thing about this. Lawyer-controlled documents which were not meant to be produced to the plaintiff or to legislation goes to the heart of document discovery, document destruction, documents kept out of courtrooms.

And the use of privilege in this sense is just as heinous as to take a document that you know causes cancer, and you privilege it, merely by putting a lawyer's name on it. This, to me, is unquestionably the process by which they were managing to keep documents out of-- documents which implicated them in a way that would show that they were lying through their own investigation in tobacco and health or health, they were going to keep them out of the public.

Dr. Sanford is mentioned here, as well. It's just a shocking revelation that lawyers are now able to manage science, and this is kind of what--

Q. This refers to the South Hampton material. Do you know what the South Hampton material means?

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A. Yes. South Hampton is a research lab which has also storage facilities, I believe. And I think an earlier reference was made to whether or not BAT did research, and if they did so, did they do it at South Hampton or whatever during the Farmer's takeover in 1988, '89, something like that.

And this is the in-house actual research. Some of it was done outside, but South Hampton research did biological research and other things that they said they didn't do or--

Q. So in reference to the South Hampton biological research, the statement that you read in context, if I could read it, says, "Continued law department control is essential for the best argument for privilege. At the same time, control should be exercised with the flexibility to allow access of the R&D staff to the documents."

A. Uh-huh. Well, that's-- the document is full of the kind of subterfuge which--

Q. Well, I guess the question I was getting to you is, were these R&D documents or were they legal documents?

A. No. They were R&D documents, no question about it. This is the whole point, smoking and health material. That's RD&E. It has nothing to do

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with legal.

Q. Page 2, first full paragraph says, "When you look at the documents upon receiving them, you should divide them into categories. One category, (sensitive) would be passed along to Dr. Sanford with directions that each individual accessed would be with prior approval of the law department."

So, as you understood it, when you removed this document, the research staff was going to have to get access to research material by going through the law department?

A. Yes. The law department was basically screening.

Q. But the sensitive documents--

A. Well, sensitive documents referred to what would be a-- one, a document that would be sensitive in the sense that it says, glycoprotein causes the-- in tobacco causes the veins to constrict, and therefore, causes coronary heart disease. That would not be read. It might be read, but it wouldn't be put out. It would first be screened by the lawyers and probably not ever be produced; a scientific document, I'm talking about.

Q. You're familiar with the terms that were used in connection with Brown & Williamson documents,

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aren't you?

A. Uh-huh.

Q. The term, "sensitive document," you've given an example of it. Would it be a misstatement to say that as that term was used, when you were working there, the term "sensitive document" would mean something that was bad or potentially bad for Brown & Williamson on the issue of smoking and health?

A. The way this is structured, as its (sensitive), you know, dead right, this is a red flag. Sensitive means, we don't want it.

Q. Bad for Brown & Williamson--

A. Bad for Brown & Williamson.

Q. Or potentially bad for Brown & Williamson on the issue of smoking and health?

A. Right.

Q. And that's the way you understood it and the way you characterized it?

A. Right. Well, a lot of the Germans and the British did not have any compunction with actually coming up with the truth. That's the way they wanted it. That's the way they saw it. They looked for ways to change things, safer cigarettes, carbon monoxide elimination, which, you know, causes

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coronary heart disease.

Q. And this document, Exhibit 41, disturbed you for the reasons that you've given?

A. It outrages me now.

Q. And is that why you took it?

A. Yes.

MR. CARROLL:

We offer Exhibit 41 in evidence.

Q. You mentioned, a few minutes ago, Mr. Williams, you said something about these documents that we've been talking about for the last few minutes, and you said something about document destruction. Do you recall?

A. Uh-huh.

Q. Are you aware of any instances in which sensitive documents were destroyed?

A. I'm aware of a specific instance while I was working there.

Q. That's what I'm talking about, while you were working there.

A. A Greg Land was working on a project in a warehouse which had to do with Brown & Williamson affiliates. And Greg and I were friends, so to speak. He came rather late in the project. And the less you knew, the more you knew; I mean, the better

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it was for you. So he was put on this project. And-- if you understand my meaning.

I got into a conversation with him at one point. And I said, Greg, what kind of stuff are you looking at over there in that warehouse? And there were reams and reams and reams of stuff, and boxes all over the place.

Q. Was he a paralegal?

A. Yes. And he mentioned, well, there were these invoices. And I said, well, what kind of invoices? And I-- since I didn't have any-- but I had a great deal of knowledge of all of this. And I said-- he said, well, Aviado, somebody named Aviado, CTR stuff, you know, stuff we paid for, checks, invoices, payments.

And he mentioned a lot of names, Sterling, Aviado, people like that. And I immediately-- it just blew my mind because these documents were meant to be hidden. And the purpose of this sweep, which involved three people, I understand, was to go through and just sort of peruse what the affiliates had or what was in this warehouse. It was a big warehouse, as I understand it.

And when I heard that they were marked for destruction or they were marked-- that's what he--

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that's what they were planning to do, that they were certifying that they had gone through these and that there wasn't anything, my mind just-- I just-- you know, I really thought, what you're doing, is you're getting rid of the receipts for your payoffs to the Katz of tobacco research, and that sort of thing, and you're doing that because you've got to be deaf, dumb and blind. And that's what Greg was. He didn't know what he was doing, I mean, essentially. But he was offered-- I mean, he was told to go do it. And he didn't know what he was doing.

And I was saying to myself, I know this stuff. They are not going to send me over there because I would say not do it. Because these are receipts, very important to litigation, and that was document destruction.

Q. Now, when he told you that, when you had this discussion with him-- and please try to be as precise as you can in responding to this question or these next two or three questions. When he told you that he was ordered to destroy documents that were sensitive to litigation, was he actually in the process of carrying that out when he told you that?

A. Well, they had a daily task of three hours-- three people going over to the warehouse,

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perusing for documents. And you can't really-- you know, you can only do a very quick skim of them.

And after the project had been going on for some time, you know, I just sat down with him. I said, what kind of stuff have you seen over there that you're marking for destruction or for not responsive to plaintiff-- not responsive or whatever? I never saw him burn anything.

Q. No, no. That's not my question. My question is, he told you that he destroyed documents, didn't he?

A. Well, he told me that the purpose of-- well, I knew the mission, by Ernie's description, was that they-- Ernie being the supervisor, that they were to go through this material in the warehouse and they were to more or less just skim it, and that it wasn't really-- and if it was relevant, okay, they might do something; however, how would he know what was relevant if he was telling me that they were taking instruments of obvious material which were directly related to stuff like this, payoffs to researchers, scientists.

Q. Were they destroying it or marking it?

A. I believe they were marking it, and I can't say that they ever destroyed it because I don't

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know.

Q. Were they marking it for destruction, as you understood it?

A. Yes. That's the way I understood it, that they were marking it for nonproduction, destruction.

Q. And back to my sort of original question on this, this was going on, this process of marking for destruction was going on at or about the time he told you that it was going on?

A. Yes. That would have been late '91 that I asked him that.

Q. In other words, he was actually in the process of performing that job when he told you he was doing it?

A. Yes. But he didn't know what he was doing.

Q. I understand. I understand. All right. I'll show you now Exhibit 42. This is from J.K. Wells. It's a file note. Are you familiar with that document?

MR. CARROLL:

Let's take a break.

(Off the record.)

MR. CARROLL:

Q. Mr. Williams, I hand you Exhibit 42,

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please, sir. Is that one of the documents that you removed?

A. Yes, sir.

Q. And is that the by now well-known dead wood document?

A. Yes, sir.

Q. Why did you remove Exhibit 42?

A. Well, it's--

Q. Well, first of all, before we get into that, let me ask you this. The date on that is January 17th, 1985, isn't it?

A. Yes.

Q. And it's a memo from J.K. Wells. Is that J. Kendrick Wells?

A. Yes.

Q. And it says, "File note, Re: Document retention."

A. Yes. First of all, this marginalia over here, which I call your attention to.

Q. What is that?

A. It says, "Delete on WANG," which would be a computer.

Q. Delete on WANG.

A. Yes. So that indicates to me that they didn't want to retain whatever it was that was in

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there.

In 1985, he talked to--

Q. Well, wait a minute, now. You've peeked my curiosity now. Do you recognize the handwriting that says, "delete on WANG?"

A. Yes. It looks like-- it looks like Mr. Kendrick's.

Q. Mr. Wells?

A. Yes.

Q. All right.

A. Or his secretary. But there was always some kind of marginalia up here. But his writing is very small. It could be Pepples. I'm not sure. But it's someone who wants to take it off the computer. And that was what struck me.

Q. And it's reference to document retention. It says, on January 15th, I talked with Earl Kohuhorst about engineering and scientific reports held by the R&D department, RD&E department.

A. Right. It's supposed to be changed from R&D to RD&E.

Q. What does RD&E stand for?

A. Research, development and engineering.

Q. Okay. This says, I gave Earl copies of papers which contained variously document numbers and

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titles and document numbers and abstracts. I explained something had marked certain of the document references-- I explained I had marked certain of the document references with an X. The X designates documents which I suggested were dead wood in the behavioral and biological studies area. I said, the B series are JANUS series studies and should be considered as dead wood.

What was your understanding of the term, "dead wood?"

A. Well, it meant to deep six it or move it. The document is dead wood. The term means it's insignificant. It's no good. It has no significance, which is not the case.

Q. How do you know that?

A. Well, because I'm aware of what the JANUS series were. I've mentioned before that the JANUS series and the B series are synonymous with the biological studies which prove that there was a causation effect in the relationship of tobacco and cancer, and this was a long-term study.

The fact that he says dead wood is another euphemism for-- it doesn't have any meaning but, in fact, if you know what the-- if you know what JANUS and B are, you have to conclude that he's either

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lying or he's trying to disguise the term or the way of dealing with this.

Q. You knew that the B series and the JANUS series related specifically to B&W and BAT studies of the effects of smoking on health?

A. Right. There are documents which reflect that.

Q. I can't read-- It says, I said, in the course of my review of scientific documents stored by--

A. RD&E.

Q. -- RD&E, a great deal of dead wood--

A. Has--

Q. -- has appeared, such as studies of the chemical composition of something tobacco leaf in--

A. I can't read it either because the-- essentially, what this says to me is, that you've got a bunch of junk, but how can you have junk if you're calling it JANUS and B, because they were important.

And if this were-- this document weren't so messed up by these-- well, R&D-- I think the significant part of this is, RD&E should undertake to remove the dead wood from its files, meaning JANUS and B. I said the articles I had suggested were the first pass of removing the dead wood, and the RD&E

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should do additional work to identify and remove the dead wood on either subjects. I suggested that Earl, the scientists, Earl Kohuhorst--

MR. SMITH:

Jim, I object. Having him read the document isn't adding to anything and it's just extending the deposition.

MR. CARROLL:

It is for me, though, because I think he's trying to clarify what he's saying.

Q. "I suggested that Earl have the documents indicated on my list pulled, put into boxes and stored in the large basement storage area. I said that we would consider shipping the documents to BAT when we had completed segregating them. I suggested that Earl tell his people that this was part of an effort to remove dead wood from the files, and neither he, nor anyone else in the department, should make any notes, memos or lists."

Why would someone not make notes, memos or lists if it was, in fact, dead wood?

MR. SMITH:

Objection to what other people might do or might understand or think.

A. Well, let me put this in the context of a

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preceding document, which was a Law Review article from the University of Texas on document destruction and document retention. What and how much would you be punished if you hid documents from your opponent?

And the article basically pointed out-- the Law Review article basically pointed out that, essentially, nothing would happen to you. You might have a few sanctions.

But in the context of the document, and reading that document and this document, you know, you draw the conclusion-- I mean, you could draw the conclusion from this that he's obviously intending to destroy documents. This document is coded to destruction of documents. It's meant to be destroyed. It's not meant to be produced.

And when you read that in the context of the Texas Law Review, you're even more stimulated to believe that J. Kendrick Wells knew that he wouldn't be punished for this or the assumption can reasonably be made that if he read it that he wouldn't really have to suffer too much along the lines of not producing something.

And it specifically spells out-- the bottom part of this specifically spells out how not to have anything-- have it in possession. Carol

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Lincoln, who was the librarian at this time in Brown & Williamson, had said that, quote, she-- that the offshore research and engineering studies sent to B&W in care of Earl and Bob Sanderford, during roughly the last one-year period, had not been sent to her--

Q. For logging in?

A. For logging in, and that most of the documents may be in the offices of Earl and Bob. And the-- so forth. So go there and pull them out and hide them.

Documents sent to be reviewed-- essentially, what this document means to me, with or without the context of the preceding Law Review document, was that the B series, the JANUS series were studies involving biological research.

Brown & Williamson has contended for many, many years, decades, that they do not do biological studies. And this goes to the awareness issue and to the information to the smoker and to the issue of document destruction.

It is clear, from this document, to me, and the reason I took it would be specifically that it had to do with biological studies, that it had to do with the spelling out of how law could pass this into an offshore account, so to speak, to avoid the--

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avoid the issue of turning it over to a plaintiff.

And in spite of the fact that it might appear and it did appear in a box of documents, the very fact that there were so many duplicates of one thing or another, no matter where it was, the numbering, whatever, doesn't dismiss the fact that he did it, he said it, he meant it, he intended it. It was his position.

Not only that, but this particular marginalia indicates to me that there was a concerted effort to make sure that nobody knew. And shortly thereafter, I believe the program was set into effect to code the documents and to make some kind of effort to use the documents, and I think that the documents is relative-- relevant to the issues of how far Mr. Wells would go in his thinking process and his deliberation to avoid discovery, which I believe--

(Off the record.)

A. Which I believe, in spite of the fact that he's a lawyer, he's telling his scientific number 1's to get rid of the documents that are important.

MR. CARROLL:

Q. There is a statement over here that refers to other documents. Did you understand, from Exhibit 42, that the documents that were being disposed of

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were limited to the B series and JANUS series or did you understand that other documents were to be--

MR. SMITH:

Let me object to that. You've stated in your question, "documents that were disposed of." The witness has not said any of these documents were disposed of, and the document doesn't say they were disposed of, and I object to the form of the question.

MR. CARROLL:

Q. Were being disposed of.

MR. SMITH:

Same objection.

A. I think there is a reasonable doubt in my mind as to whether or not all of the JANUS and B series were destroyed.

MR. CARROLL:

Q. No, no. That's not my question. He objected to the question on the very basis that you just answered it on.

Was it your understanding that-- not that they were, but that the B series and JANUS series studies should-- were to be disposed of as a result of this memorandum?

A. Yes. Yes. Sure.

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Q. And was it your understanding that it was limited to those or that additional documents were to be disposed of?

A. I assume that additional documents. And they-- the scientists knew what they were talking about.

Q. And did you consider this document, at the time you removed it, to be evidence of crime or fraud, in your opinion?

A. Yes, sir.

Q. And is that one of the reasons that you removed it? Is that why you removed it?

A. Uh-huh.

MR. CARROLL:

We offer Exhibit 42 in evidence.

(Off the record.)

MR. CARROLL:

Q. With reference to the testimony that you've given today about why you removed these various documents that are the subject of the litigation, and particularly, those that you have identified here today, did you have the same belief that you've described about the documents you've identified here today concerning evidence of crime or fraud when you removed all of the documents that are

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part of the lawsuit here?

A. Yes, sir.

Q. In other words, you had the same general feeling about all of them, and is that why you removed them?

A. Yes, sir.

Q. Did you convey this information to Richard Scruggs, the beliefs that you had?

A. Yes, sir.

MR. CARROLL:

I believe that's all.

EXAMINATION

BY MR. ROYALS:

Let me say a little preamble. I am going to put some documents into the record by way of expediting the deposition. Rather than go through individual documents, I'm going to offer some into the record.

Q. Mr. Williams, I am going to hand you this and ask if you recognize that.

A. Yes.

Q. What is that?

A. It's-- it is an Affidavit in Expectation of Death.

Q. When was that prepared?

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A. I think the-- sometime in '91.
Q. By whom?
A. By me, '92.
Q. Why?
A. Right in that area.
Q. Why was it prepared?
A. Well, in this case, this particular form of it was prepared because I felt like I might be in harm's way, to put it lightly, and-- I had had a quintuple bypass surgery and I felt like there was an indication that there might be some pressure applied. Perhaps, I might not live.
Q. Had your employment with the law firm that you were working for been terminated at that point?
A. Yes.
Q. And had litigation begun in Kentucky?
A. Yes.
Q. Is that a true and accurate copy of the document you prepared at that time?
A. I haven't gone through the whole thing, but I would say it probably--
Q. Does it appear to be?
A. Yes. It appears to be.
Q. Going back to this morning, you were giving some historical reasoning and rationale as to

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your taking of the documents that you've admitted taking here, been accused of taking and admitted taking.

Does this document explain your rationale and reasons for taking those documents?

A. Yes.

MR. ROYALS:

I want to make that the next exhibit to the deposition.

(Exhibit 43 was marked.)

MR. ROYALS:

Q. Take a look at a book you've shown me or a set of documents called, "The Black Book." Can you pull that out?

MR. SMITH:

Wait a second. It looks like the cover page is just the front of a file folder. I think the exhibit number ought be on the cover of the document in case they get separated.

MR. ROYALS:

Okay. You can take that cover page off.

Q. What is "The Black Book?" You and I have discussed that during the break and you referred to it as "The Black Book." For the record, what is that you have in your hand?

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A. This is a document which set on my desk-- or let's take away that one. But a series of documents which I think has been labeled in various ways. But it has to do with the-- with the description I was giving this morning of the various people who have been involved in the legislative and in witnesses before, and in trials. It is called the "CTR Special Projects Book," and it deals with the amounts of money in projects which were generated by lawyers, both in-house and in the firms of Shook, Hardy & Bacon, and presumably Ed Jacob, as well.

It gives, for example, J. Eysenck, whom I've brought up today.

Q. Rather than-- excuse me. Rather than going through the individual names, just tell me what that broad group of documents is. I think you probably have.

A. Okay. It is a description of researcher, of what he did, the period he did it, the budget it was done, and the date approved. And there are approximately 200 pages here, and it is labeled, "Special Accounts" or "CTR's Special Accounts."

Q. How is this connected to your rationale for taking these documents?

A. The basic fraud that I feel is one

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involving lawyers funneling money, routing money to create science, not for the purposes of a clear and an open field for scientific analysis, but for the purposes of disguising the true meaning of the Council for Tobacco Research.

Q. Where did you come by these documents?

MR. SMITH:

Could I stop you just for a second? There is a letter on top that may be related to the same subject--

A. I would like to include the whole thing, if I can.

MR. ROYALS:

I'll get to that in just a second.

Q. Where did you get these documents?

A. They came from Brown & Williamson.

MR. ROYALS:

Do you want to voir dire him on that letter on the top of there? Because I'm going to offer those in. If there are some questions, Gordon, you want to ask briefly about why should this be included, why should this be included.

MR. SMITH:

I'll ask him on my examination.

MR. ROYALS:

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Let's make it the next exhibit, then.

MR. SMITH:

Let's identify for the record that it was Document 568, Document 78, Document 77 and a number of other documents in this. So it's a compilation of many documents and different documents.

THE WITNESS:

I believe that you've included pretty much one document in your in camera, did you not, in the other case?

MR. ROYALS:

Q. Well, your testimony is this is a compilation of documents you received in discovery; is that correct?

A. Right.

(Exhibit 44 was marked.)

MR. ROYALS:

Q. Do you have together anywhere or have you assembled a group of documents that you have referred to as a backup to your intent to-- your Affidavit in Contemplation of Death? Is that question clear? We have introduced your intent-- your Affidavit in Anticipation of Death. Is there a particular group of documents that you have segregated and assembled that are backup documents to that document? Yes or

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no?

A. Yes.

Q. Would you pull that out, please, if you've got that assembled and together somewhere?

Can you identify the folder that I'm holding in my hand that has several--

A. Well, let me--

Q. That has--

A. Yes.

Q. I'm holding in my hand a folder, an expandable folder that has several packets of documents inside it. And are these the documents that you relied on or some of the documents you relied on to prepare your affidavit in fear or in contemplation of death?

A. Yes.

MR. ROYALS:

I would like to introduce this as the next exhibit.

(Exhibit 45 was marked.)

MR. SMITH:

There's a loose group in the front. The rest are in rubber bands. Is this part of--

MR. ROYALS:

Just put a rubber band around that.

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MR. SMITH:

For the record, there are six groupings of documents in separate rubber bands that appears to be maybe five inches thick.

MR. ROYALS:

No further questions.

There were some pretty strenuous objections this morning to the length of time we were taking up going through those individual documents, so that's why we chose this method of attaching those to the deposition.

EXAMINATION

BY MR. SMITH:

Q. Mr. Williams, Exhibit 43, you described as an Affidavit in Contemplation of Death; is that correct?

A. Yes.

Q. And I believe you indicated that it was a version of something, correct?

A. Yes.

Q. Is this a version of what is otherwise called your narrative?

A. Yes.

Q. And you began writing this in '91, didn't you?

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A. I believe I began writing it in '91.
Q. And you began writing it when you were still employed by Wyatt, Tarrant & Combs, didn't you?
A. Yes.
Q. The narrative version has footnotes and references to documents at the end of some chapters, does it not?
A. Yes.
Q. The Affidavit in Contemplation of Death does not, I do not believe.
A. I do not know, but I think you're probably correct.
Q. Why is that?
A. I don't know.
Q. Have you distributed the Affidavit in Contemplation of Death or the narrative to any potential purchasers of its intellectual property rights?
A. No.
Q. Do you, personally, maintain the intellectual property rights to the narrative in the Affidavit in Contemplation of Death?
A. Could you clarify that, please?
Q. Is this your property, your literary

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property, Exhibit Number 43 and other versions of it?

A. I'm not a lawyer. I don't know, but I would-- I have not registered anything with the Library of Congress.

Q. Mr. Williams, you've given a number of opinions today on various items and various activities that may or may not violate all kinds of laws. Do you consider that to be your literary property?

MR. ROYALS:

Yes, or no, or I don't know.

A. That, to be my--

MR. SMITH:

Q. Exhibit 43.

A. Yes.

Q. Now, referring to Exhibit Number 11, which I believe you have identified as materials you received from Richard Daynard's organization--

A. Yes.

Q. Is it from this document that you were able to collect the various magazine articles that you referred to earlier in the deposition?

A. From parts of them, yes.

Q. I'm sorry. I don't understand that.

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A. There were three parts to the exhibit, which is registered as-- I don't know. Can you lift that up and tell me what that exhibit is, that number? What's the number?

Q. 11.

A. There are three parts to it. I believe I relied on Part 1.

Q. And from Part 1, you were able to-- that's where you were able to get the references to, for example, Exhibit 15, the Cosmopolitan article, correct?

A. I think that one, yes, that would be true.

Q. And the Harper's, Exhibit 14.

A. I believe so.

Q. And the Barron's, Exhibit 18?

A. No, sir.

Q. Where did that come from? Where did you learn about that?

A. I learned about that through Brown & Williamson.

Q. By looking at Brown & Williamson files?

A. A reference was made. That is not a Brown & Williamson document.

Q. On the Barron's article, number 18, it--

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was there, in fact, a Barron's editorial?

A. I believe that's a reprint of a document that was circulated by the PR.

Q. My question is, was there an editorial in Barron's written by the Barron's editorial board?

A. No.

Q. There never was?

A. No. Not that I know of.

Q. The document states, "The Tobacco Institute believes every thoughtful adult American will want to read every word of this front-page editorial in Barron's." Is it your testimony that there was no front-page editorial in Barron's?

A. I don't remember whether there was or was not.

Q. This document simply purports to be a distribution of an editorial written on the front page of Barron's, correct?

A. It was placed in Barron's, yes.

Q. You're not contending that Brown & Williamson wrote an editorial that appeared on the front page of Barron's, are you?

A. No.

Q. Barron's wrote the editorial in Barron's, didn't they?

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A. I think the answer to that would be no.
Q. Who wrote it?
A. It was authorized by Brown & Williamson. I don't know who wrote it.
Q. Where is there a document authorizing anyone on behalf of Brown & Williamson to write an editorial in Barron's?
A. In the files in Mr. Burgard and Mr. Rosser Reeves at Brown & Williamson.
Q. Those documents deal with distributing an editorial written by Barron's after it was published, don't they?
A. No, sir.
Q. Did you take any document that would demonstrate or support a fact that someone on behalf of Brown & Williamson would write an editorial that Barron's would publish as an editorial?
A. The background that would be--
Q. Excuse me, sir. I asked you, do you have any documents, is the question, that would support the fact that someone from Brown & Williamson or on behalf of Brown & Williamson was authorized to write an editorial that Barron's would publish as an editorial on its front page?
A. The answer to your question is, Brown &

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Williamson has such documents.

Q. You don't have any?

A. I don't.

Q. And who wrote the document that authorized that?

A. I don't know. It would be in the files of Mr. Burgard or Mr. Blalock or Mr. Reeves.

Q. Just out of curiosity, since you seem to be familiar with these documents, how does one go about getting the editorial board at Barron's to write an editorial for you?

A. Are you-- your question is-- are you asking me to speculate?

Q. You seem to be aware of the documents, and I would like to know if those documents made you aware of how Brown & Williamson was going to get Barron's to write an editorial or write an editorial that Barron's was going to publish as an editorial of its editorial staff.

A. The same method that they used in the True Magazine article.

Q. Do you know who wrote the Barron's editorial that's referenced in Exhibit 18?

A. No, I don't.

Q. Do you believe that-- Do you have any

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opinion on whether or not, based on what you've read, what you've testified to, that the person or persons writing the Barron's editorial, in fact, believed what they said?

A. Do I have an opinion?

Q. Yes. You can answer.

A. Repeat the question, please.

(Wherein, the question was read back.)

A. I do have an opinion.

Q. What is it?

A. I believe that it was an effort to-- it was written in an effort to cause the further doubt created on the controversy of tobacco as a disease-causing--

Q. You believe Barron's was a cohort in doing that?

A. I do not know the answer to that.

Q. When did you obtain Exhibit 11?

A. I think that was in-- shortly in or around the summer of 1992.

Q. Well, I think that's right because on the cover page, it says, document packet 7/15/92. Does that sound about right?

A. About right.

Q. And you obtained the copies of-- Let me

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see if I can get them all together, here. You then received copies of Exhibits 12 through 17, which are the various publications that you testified about earlier, subsequent to receiving Exhibit 11, correct?

A. I didn't ever receive them.

Q. Obtained them?

A. I researched them.

Q. You went to the library and got them?

A. Yes, sir.

Q. But you got them after you got Exhibit 11, sometime in July of 1992?

A. In a period of time, yes, some-- is Eysenck in there? I'm not sure--

Q. Well, the question is a yes or no. Did you go obtain copies of Exhibits 12 through 17 after you got the references to them that are contained in Exhibit 11?

A. Some of them, yes.

Q. And all of this occurred after you left Wyatt, Tarrant & Combs?

A. Yes.

Q. And after you had taken all of the documents?

A. Yes.

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Q. You testified earlier in this deposition-- not today, but at the last session-- that you returned on Mr. Scruggs' plane with three boxes of documents from Nina Selz, correct?

A. I don't recall the testimony.

Q. Did you return from Orlando on Dick Scruggs' plane with three boxes of documents from Nina Selz?

A. I assume they were there. I did return from Orlando with Nina Selz on Dick Scruggs' plane, yes.

Q. And when you got back to Pascagoula, you subsequently saw three boxes of documents, didn't you?

A. Yes.

Q. And you looked through the three boxes of documents, didn't you?

A. Yes.

Q. And those were the three boxes of documents you had delivered, personally, to Nina Selz, correct?

A. I don't remember exactly. Which documents are you referring to?

Q. You delivered three boxes of documents at various times to Nina Selz, correct?

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A. Yes. And-- Yes.

Q. The first box of documents you delivered to Nina Selz was in around 1990 or 1991, was it not?

MR. ROYALS:

Excuse me just a minute. Gordon, are you going into new stuff or is this stuff we already did?

MR. SMITH:

No. We didn't do this because you made me quit the second day. We got to a point, but we didn't get past here.

MR. ROYALS:

Obviously, I don't have that deposition before me, so I am just going to request that you not go back over what you--

MR. SMITH:

I'm going over-- I may go over a little prefatory because I'm going to a new area, but I want to make sure that he understands what I'm talking about. Okay? And I'm not intending to be redundant. I may set the stage, though.

MR. PRICE:

Also, this time, this testimony is different from the testimony he gave the first time, totally different.

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MR. ROYALS:

Well, that's one of my points. If you're going to ask him about something that you asked him before, he needs to have that deposition to be able to review it first. I understood that we were going to move onto new territory. I did not ask him to review his old deposition, and I don't even remember what he said. I'd have to review it.

MR. SMITH:

It's the same deposition, as we've said, and if he says something different here today, I'm certainly going to follow up on it. He's had months to read the deposition and if he hasn't, he hasn't, but I'm going to follow up on it.

Q. Have you read your deposition since the first session, Mr. Williams?

A. No.

MR. ROYALS:

Here is that deposition, if you want to refer to it.

MR. SMITH:

Q. Mr. Williams, when did you-- is it correct that you first delivered a box of documents you had taken from Brown & Williamson to Nina Selz in 1990 or 1991?

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A. I don't recall.

Q. Did you deliver a box of documents to Nina Selz before you left the employ of Wyatt, Tarrant & Combs?

A. I think so.

Q. Did you deliver more than one box of documents that you took from Brown & Williamson to Nina Selz before you left the employ of Wyatt, Tarrant & Combs?

A. I don't recall.

Q. But you do recall that eventually, you delivered three boxes of documents to Nina Selz, correct?

A. It may have been less. It may have been more.

Q. At least three boxes?

A. Possibly.

Q. How many boxes got to Pascagoula on the airplane?

A. I don't know.

Q. How many boxes were present when you saw them in Pascagoula?

A. At what time?

Q. The first time you saw the boxes of documents that you had given to Nina Selz in

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Pascagoula after the plane trip with Dick Scruggs to Orlando.

A. I don't remember. It could have been three. It could have been.

Q. Is that your best recollection?

A. That's my best recollection.

Q. That it was three?

A. It could have been three.

Q. And are these file boxes? How big of boxes were these?

A. I don't remember.

Q. Well, were they small, square boxes or long file boxes?

A. I don't remember.

Q. But it was-- can we agree that it was three, approximately?

A. It could have been three.

Q. Where did you first see the documents, the boxes of documents that you had left with Nina Selz when you got back to Pascagoula?

A. In a vault.

Q. And when you saw those boxes, they were the same boxes that you had delivered to Nina Selz, were they not?

A. I don't-- I assume that possibly they

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were.

Q. Well, they appeared to be, didn't they?

A. Possibly.

Q. You went to Orlando with Mr. Scruggs to meet Nina Selz so that you could retrieve the boxes of documents you had left with her, didn't you?

A. Yes.

Q. And you told her to bring the boxes of documents that I have left with you to an airport in Orlando, didn't you?

A. Yes.

Q. And those are the boxes that you saw in the vault in Pascagoula later on, weren't they?

A. Possibly.

Q. Possibly? You don't know that?

A. It's the difference between possibly and maybe there were something-- there were other boxes in there, as well. I don't know.

Q. But at least, in the vault, were the boxes that you had delivered to Nina Selz, correct?

A. Possibly.

Q. Did you see the boxes that you delivered to Nina Selz in the vault in Pascagoula? Surely-- You can't answer that yes or no?

A. I'm saying that it's possibly true.

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Q. Well, is it more than possibly true? Is it accurate that you saw the boxes you delivered to Nina Selz that you asked her to bring to the Orlando airport in the vault in Pascagoula?

A. It is possible.

MR. SMITH:

Tom, I've got to tell you, I'm troubled by this "it's possible" to everything. It strikes me as pretty phenomenal that that's the answer I get out of this. And it happened-- and the reason I raise this is I know you certainly aren't involved with coaching him to do that. I would never suspect that. But as I read the last deposition, there were more and more "it's possibles." And I'm not sure that we ought not to have this in front of the court so we could get an order for a more direct answer.

MR. ROYALS:

Well, let me suggest that you go ahead and ask your questions, and then if you think there are some we ought to bring before the court, we'll do it all at once.

MR. SMITH:

Well, there are a whole lot of them. I'm not so sure that the whole examination doesn't need to be before the court, but let's keep going.

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Q. Did you see the approximately three boxes of documents that you delivered to Nina Selz in a vault in Pascagoula?

A. It is quite possible that I did.

Q. Did you see boxes that, as far as you could tell, from appearance and contents, were, in fact, the boxes you had delivered to Nina Selz in the vault in Pascagoula?

A. Which boxes?

Q. I'm going to ask it again. Did you see boxes that, as far as you could tell from their appearance and contents, were, in fact, the boxes you had delivered to Nina Selz and did you see these in the vault in Pascagoula?

A. Possibly.

Q. When you looked at documents in the boxes in the vault in Pascagoula, did you recognize the documents that you had taken while an employee of Wyatt, Tarrant & Combs?

A. I don't remember.

Q. Were the boxes that you delivered-- did the documents that you delivered to Nina Selz, the three-- approximately three in number, contain documents that you stole from-- that you took from Wyatt, Tarrant & Combs?

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A. It's been a while. I don't recall.

MR. SMITH:

Tom, this is amazing. I'm going to take a break for a minute.

(Off the record.)

MR. ROYALS:

Let me suggest, Gordon, that if you will ease up a little bit. This guy has been deposed over some 400 hours or whatever. You and he have become foes, I think, deposition foes, over this period of time. He is somewhat intimidated by you.

Your questions are a little bit open-ended and indirect, in my opinion. If you were to-- You're asking questions like, "Did you see these documents in the vault?" Well, what vault? When? Where? Who was present? What did you observe? You know, I think that he is probably doing a little battle with you, like you are him, but I think he's basically giving you correct responses to the questions you're asking.

MR. SMITH:

Well, I don't even want to-- I appreciate that. I am going to start over and I'm going to see what answers we get.

MR. ROYALS:

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A new dome?

MR. SMITH:

I'm asking very direct and limited questions, and they're very simply answered. And if he's confused by some word I'm using, then he can tell me that, but he's saying "possibly" and they're-- Let's start.

MR. ROYALS:

It's like you're asking, when you were in Jackson, did you see the women?

MR. SMITH:

Well, I disagree with that.

MR. ROYALS:

What women, which women?

MR. HEWES:

He knows which vault we're talking about, Tom. It's kind of ridiculous to be arguing about that.

MR. SMITH:

He remembers extremely well when he's talking to reporters, according to the reporters' articles, but I don't get the answers that he gives in the press.

I'm going to start over again.

Q. Did you take, over time, three boxes of

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documents to Nina Selz for her to keep?

A. Did I take, over time, three boxes-- I don't understand that question.

Q. Did you take, over a period of time, three boxes to Nina Selz for her to keep for you?

A. It could have been more; it could have been less.

Q. What is your best recollection of the number of boxes you took to Nina Selz to keep that contained documents taken from Wyatt, Tarrant & Combs?

A. Three.

Q. Thank you.

A. But it could have been more.

Q. You packed those boxes, correct?

A. I don't recall.

Q. Did anybody else pack any of those boxes for you?

A. What do you mean, packed?

Q. Put the documents in them.

A. Put the documents in-- put things they were-- rather than take them to a mail place or to put them on a bus or something?

Q. Mr. Williams, I think the question, did you pack the boxes with the documents you took from

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Wyatt, Tarrant & Combs is a question that's capable of a direct answer. Can you answer it?

A. Did I put the documents in the box, the boxes? The answer to that is yes.

Q. Did you, in any way, seal the boxes with tape or any other type of sealing material?

A. Yes.

Q. You had personal knowledge of what the boxes looked like, then, didn't you?

A. Well, over a period of time, I guess the answer would be yes and no. I would probably recognize them.

Q. And you did recognize them in a vault in Pascagoula sometime after April 15, 1994, didn't you?

A. I don't remember the date. I don't remember the recognition date.

Q. But you did-- well, the document-- you went to Orlando on April 15 of 1994 for the purpose of retrieving the boxes of documents that you had left with Nina Selz, didn't you?

A. I don't remember the exact date. If I said I did in the last deposition, it alludes me at this point. I don't remember the exact date.

Q. You have now testified that you would

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recognize the boxes that you delivered to Nina Selz for safekeeping. At any time, did you see those boxes in a vault in Pascagoula?

A. Yes.

Q. Approximately when?

A. I don't remember exactly.

Q. After your--

A. April.

Q. Of '94?

A. '94.

Q. After your return on Mr. Scruggs' jet from Orlando, correct?

A. Yes.

Q. Where was the vault?

A. Center of a building, in a building which was formerly a bank on-- gee. That's-- I don't think it-- it's not Market. It's a main street, and it was in the middle of the building, and I don't remember the name of the street.

Q. Was this the building that housed Mr. Scruggs' law office?

A. No.

Q. What--

A. Wait a minute. I believe that-- I believe that he used a different number, but it's possible

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that they were-- there was a-- some kind of name on it. It wasn't a principle law office, no.

Q. This was not Mr. Scruggs' law office building?

A. I don't think it was, no. He has a law office in the square in Pascagoula.

Q. Well, where was this building? Was it not in the square?

A. No.

Q. Where was it?

A. As I say, the street, I don't remember the street name.

Q. Had you been to lunch at some time prior to that time with Mr. Scruggs where you mentioned to him that you had something that you needed to place in safekeeping or in a safe place?

A. Had I been to lunch with him? State that again. You're--

Q. Had you been to lunch at some time prior to the time that you saw the documents in the vault?

A. Yes.

Q. Had you been to lunch with Mr. Scruggs at some time prior to the time that you saw the documents in the vault?

A. Yes.

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Q. At a lunch with Mr. Scruggs, did you tell him that you had something you wanted to move to a safe place?

A. Yes.

Q. And did you tell him that these were documents that you wanted to move?

A. Yes.

Q. And had you described generally the nature of the documents to him?

A. In general, yes.

Q. What, exactly, did you tell him about the documents that you wanted to move to a safe place?

A. What I told you today, essentially.

Q. The entire morning testimony?

A. Well, in terms of a fraud and a conspiracy, and what I thought should be looked at by the federal government.

Q. Well, I'd like to tell you-- I would like you to tell me exactly everything that you told Mr. Scruggs before you went to retrieve the documents.

A. I don't remember exactly.

Q. Well, I would like you to tell me what your best recollection is.

A. I don't remember exactly what I said, other than I wanted to have the documents, the books,

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the box, whatever that I had, taken out of Nina's possession and put into custody.

Q. You've told me here, in the last few minutes, that you described, generally, the nature of the documents to Mr. Scruggs. I want your testimony now, your recollection now of what you told him about the documents.

A. I don't recall exactly.

Q. Well, don't-- I don't want to know exactly. I want to know generally. I want to know everything you recall about-- that you told Mr. Scruggs about the documents before you went to get them.

A. Well, I can't remember that.

Q. You can't remember anything about what you told Mr. Scruggs about the nature of the documents?

A. Well, I remember essentially that-- maybe that was the day that there was some kind of magazines with ads on the back of them, and we were discussing how these ads got into doctors' offices and that sort of thing. And I don't think I was very specific.

Q. All right. You've told me you recall mentioning something about magazines with ads on the back of them to Mr. Scruggs prior to going to get the

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documents in Orlando. What else did you tell--

A. I'm not really sure that was-- that that-- but that's-- I remember something like that. We are talking three years ago.

Q. Okay. I'd like you to really concentrate. You've described in great detail your memory of documents today and made a long tutorial-- you had a long tutorial examination, where you spoke with recollection of things that you learned in the '80s. So take your time because I want your absolute best testimony today of what you discussed with Dick Scruggs about the documents you took from Brown & Williamson prior to the time you went to retrieve them in Orlando.

A. I would probably have to answer that as I don't recall, in terms of specifics. But I felt that the information should be conveyed to an officer of the law, an officer of the court who could make a decision, a person who was in the mind set of the congressional investigations that were going on at the time, a person who would-- or a body of law who would be able to recognize what I thought to be crimes.

Q. What did you tell Mr. Scruggs about the contents of the documents prior to the time that you

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went on his plane to Orlando to retrieve them? And, of course, I'm talking about the documents that you took from Wyatt, Tarrant and Combs.

A. I honestly cannot tell you what I said. I don't remember if I said anything about the contents. Best answer.

Q. You remember absolutely nothing that you-- no information, whatsoever, that you gave to Mr. Scruggs about the contents of the documents?

MR. ROYALS:

I think the witness has testified that he gave Scruggs a general description of the documents commensurate with what he said here this morning.

I think he's saying that he remembers no specifics or direct quotes, and if my interpretation of that is correct, then he's answered your question.

MR. SMITH:

Well, what I want him to do is state for me now what the general description of the contents of the documents he gave to Mr. Scruggs was.

MR. ROYALS:

If you gave Mr. Scruggs a general description of the documents, then--

THE WITNESS:

No. That's--

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MR. ROYALS:

Then tell Mr.--

A. It's far too complex to give anybody a general description. I don't think that I-- other than a notice that these-- that I have essentially viewed the matter in Brown & Williamson and Wyatt, Tarrant & Combs from the standpoint of a fraud perpetrated upon the American people. And I don't even remember discussing that, specifically, at that time.

And I think my mind was more on Nina, and getting it out of her hands and into the custody of an official who could tender it to a lawful body, if they thought it was the thing to do, and if not, to send it back to whatever-- under whatever conditions. And that is my answer, sir.

Q. All right. Now, so what you relayed-- Let me make sure I understand that. What you relayed to Mr. Scruggs was that you wanted things that you had learned while working at Wyatt, Tarrant & Combs from Brown & Williamson documents to be considered by some other party, like a court; is that correct?

A. Well, I think that Congress would be a sufficient place, since we are part and parcel of a democracy, and I think it's important that Henry

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Waxman, who had been under-- I think at the time, was investigating the tobacco industry, might be a likely chance.

I had always considered Congress as a proper place for these documents. I just didn't know how or how-- but I don't remember discussing this with Mr. Scruggs at this time.

Q. How many lunches did you have with Mr. Scruggs before you flew on his jet to Orlando to get the documents you had taken from Wyatt, Tarrant & Combs?

A. I-- you know, a couple. I don't remember. Mr. Bozeman was there. I was talking more to Mr. Bozeman than anybody. I think it was more of a--

Q. Mr. Bozeman was there?

A. On one occasion, yes. I recall-- these were not-- this is LaFont Inn, and it's sort of like informal. Everybody is around and it was basically lunch. That's it.

Q. Well, again--

A. I don't remember the number.

Q. Did you have more than one lunch with Mr.--

A. More than one, yes.

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Q. And at those lunches, did you discuss the contents either specifically or generally of the documents that you took from Wyatt, Tarrant & Combs?

A. I--

THE WITNESS:

You know, Tom, I really have tried to answer this question.

MR. ROYALS:

Yes. I think he's answered that question, Gordon. I object to asking it again. I am going to direct him to not try to answer it again. He's answered it in every way possible.

MR. SMITH:

Well, it's an important point, and I wanted to make sure that I had his absolute best recollection.

MR. CARROLL:

We join in the objection.

MR. SMITH:

Q. Mr. Scruggs did understand, from what you imparted to him, that there were documents from-- that you had taken from your employer, Wyatt, Tarrant & Combs, at Nina Selz', correct?

A. I do not know. I really, sincerely, don't remember whether I said documents, whether he knew

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anything about documents. There were books. There was-- There were various things. I was more concerned, as I've said before, rather than conveying to Mr. Scruggs anything particular that-- it's kind of hard to encompass the numerous frauds that you see before you and-- in a conversation or two, and I was more concerned about Nina, getting them in custody of somebody who could handle them and put them in a proper place.

Q. Now, no one knew that Nina had documents, did they, at this time?

A. That's a very broad assumption. I do not know the answer to that.

Q. Well, that was a broad question. I would like to withdraw it and ask a better one.

No one knew that you had taken three-- approximately three boxes of documents to Nina Selz at that time, did they?

MR. CARROLL:

I am going to have to take a page out of your book, Gordon, and object to that question as calling for speculation about what other people knew.

MR. SMITH:

I think that's a fair objection.

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Q. Had you told anybody that you had taken three boxes of documents to Nina Selz prior to the time that you went to Orlando in Dick Scruggs' jet to retrieve them?

A. I don't think so. I don't remember, though. You're saying three and you're saying boxes and--

Q. And I'm talking, of course, prior to the time that you told Dick Scruggs that these boxes were in Orlando.

A. Is that a question? I don't understand what your question--

MR. ROYALS:

We are just clarifying that his question was had you told anybody other than Scruggs because Scruggs, obviously, was going with you to get them.

MR. SMITH:

Q. Right.

A. Assuming I told-- the documents-- I don't know. Maybe there was someone who overheard, I mean, at LaFont or somewhere. I don't know. Mr. Bozeman, maybe. I didn't exactly tell anybody. I thought you meant-- I'm not sure what you mean.

Q. Well, let's go on, shall we? You told Mr. Scruggs that you had something you wanted to move to

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a safe place, and you told him that whatever it is that you had was in Orlando, didn't you?

A. Yes.

Q. And he subsequently offered to provide you his jet to go retrieve these materials you wanted to be kept in a safe place, didn't he?

A. Yes.

Q. Did he know what it was he was going-- his jet was going to retrieve when he offered to give you his jet to fly to Orlando to retrieve it?

A. He didn't exactly give me a jet.

Q. Can you answer my question?

MR. ROYALS:

As to whether Scruggs knew--

MR. SMITH:

Q. My question goes to this. I'm not a wealthy man, like Mr. Scruggs, and I don't have a jet, but I would think that most people wouldn't provide a jet to somebody to fly from Pascagoula to Orlando just on the representation that some fellow he's had lunch with has something he wants for safekeeping.

And so my question is, when he provided his jet to you to fly to Orlando to pick up Nina Selz and the documents, boxes of documents you had taken

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from Wyatt, did he know what it was you were going to retrieve?

MR. CARROLL:

Okay. Let me make this objection. I do not object to the question part of that statement that you made. I do object to the form of the question when you say that you're not a wealthy man, like Mr. Scruggs, as unnecessary commentary, but I don't object to your question.

MR. SMITH:

Fine. Go ahead.

A. Based on the first presumption that I do not know whether Mr. Scruggs is a wealthy man. I presume he is. I do not know whether you are a wealthy man. I presume that you may be. Whatever Mr. Scruggs--

Q. I didn't ask you a question about whether he was a wealthy man. Let me tell you what the question I asked was.

A. Well, I think you made a statement before you made a question.

MR. ROYALS:

Did Scruggs know you were going to pick up documents? To your knowledge, did he know that?

A. I assume that he knew that-- on the basis

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of my reputation, having been through the skewed trial process in Louisville, Kentucky, with the skewed jurisdiction and the battles with the Fifth Amendment and all of this, the public relations aspect of this, that he knew a lot about me.

MR. SMITH:

Q. Well, based on your meeting at the Old Time Delicatessen in Jackson, you were aware that Mr. Scruggs knew that you were the paralegal from Kentucky who had taken documents, correct?

A. When I had met Mr. Scruggs at the Old Time Delicatessen, I didn't know who he was.

Q. But he knew that you were the paralegal from Wyatt, Tarrant & Combs who was involved in litigation and who had taken documents from Wyatt, correct?

A. I presume so.

Q. Well, you had your counterclaim there. Do you recall? You testified to that and you showed it to him.

A. I'm not really sure whether I did show him my counterclaim, but I think I did.

Q. Okay. Well, let me just ask you--

A. But it wasn't to Mr. Scruggs. I think I showed it to Mr. Barrett. I'm really not sure. I

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don't know if I showed it to him. I had it with me but I really don't remember. I think it was public knowledge, I mean, that there was a-- that you put us into a-- Fox and I into a compulsory type counterclaim on the 3rd of March, was it, or the 4th.

Q. You're not answering the question. You can continue to talk if you want to.

A. I am sure you would like that, but I don't have an answer. What's your question? Go ahead. I'm sorry.

Q. Okay. I'm going to ask this as directly as I know how and then I'll go on. What did you tell Dick Scruggs you had in Orlando that you wanted to retrieve and put in safekeeping?

A. The boxes.

Q. What did you tell Dick Scruggs was in the boxes that you wanted to retrieve from Nina Selz?

A. As far as I recall, it was the fraud that Brown & Williamson and the tobacco industry had been involved in, and if I said that, I said that, but I don't recall exactly. But my reputation had preceded me, and I believe that there might have been possibly some presumption that I had some significant material, but I didn't go into detail, and I know

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that for--

Q. When you say your reputation had preceded you, you mean by that that Mr. Scruggs understood that you were the paralegal from Wyatt, Tarrant & Combs that was in litigation in Kentucky and that had taken documents from Wyatt, Tarrant & Combs, correct?

A. Yes.

Q. And you and Mr. Scruggs certainly discussed the general fact that you were that person, correct?

A. I don't recall, but I assume we did.

Q. Now, who returned from Orlando with the boxes of documents to Pascagoula?

A. Huh? Who returned?

Q. Who was on the plane?

A. The question? Who was on the plane?

Q. Who was on Mr. Scruggs' plane when it returned from Orlando with the boxes of documents?

A. There were two pilots. One of them is named Anderson, I think. There was Nina. There was me. There was Dick Scruggs, and there was Diane Scruggs.

Q. Were all of you still on the plane when the plane got back to Pascagoula?

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A. No.

Q. The Scruggs got off somewhere in between, didn't they?

A. You didn't ask the question but, yes, they did.

Q. So when the plane got back to Pascagoula, you and Nina Selz were the passengers on the plane, correct?

A. That's correct, and two pilots.

Q. Now, where were the boxes in the plane during transit?

A. At which point?

Q. When you were in the air.

A. I don't know because I think-- they were somewhere in a compartment underneath or around or something. I-- I never saw them.

Q. You never saw them?

A. No. But I-- there was a point where I-- you know, I saw something, and the plane stopped, I think, in Destin. I'm not sure. I believe that's where Dick Scruggs got off. And I believe he-- he and his wife were vacationing or something.

Q. When you say, at some point, I saw something, I don't understand what you mean.

A. I saw something-- like a box somewhere,

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and it looked like it was underneath where the compartment is, but I don't recall exactly where the compartment is on a lear. Somewhere near the step.

Q. Have you ever been on any of Mr. Scruggs' planes since that time?

A. Since the trip to-- yes.

Q. When?

A. I don't remember exactly, but-- can I--

MR. SMITH:

Let the record reflect that Mr. Williams is conferring with Mr. Royals.

A. I don't remember the exact date, but I did fly with him once.

Q. On what occasion?

A. To come to Jackson.

Q. For what?

A. To see Mr. Royals.

Q. Give me an idea of when that was.

A. God, I don't know. It would have to be on-- in the summer.

Q. The summer of last year?

A. No, '94.

Q. Of '94. So we're-- it was during the '94 timeframe?

A. Yes, '94. And he flew the plane.

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Q. And what?
A. He flew the plane.
Q. Scruggs flew the plane; is that what you said?
A. Yes.
Q. Personally?
A. I think it was him, yes.
Q. You were making that comment that he was the actual pilot on that occasion, right?
A. He's a qualified pilot on that plane.
Q. And he did, in fact, pilot it on that occasion?
A. Yes.
(Off the record.)
MR. SMITH:
Q. So this was on the prop plane?
A. It's a prop plane. I don't know anything about it.
Q. Now, let's go back to Orlando. You're on the plane. You stop somewhere, maybe Destin. You let off Scruggs. The plane goes back to Pascagoula. Did you see the boxes of documents unloaded from the plane?
A. I don't-- I saw something, but I-- I really didn't-- I don't recall if I saw the boxes

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that were there, but I know that they were unloaded.

Q. Okay. How do you know that?

A. Well, because I think that someone picked them up.

Q. How did you leave the airport; by car?

A. Which airport?

Q. The Pascagoula airport, when you got back from Orlando.

A. My car.

Q. How were the boxes of documents transported away from the airport?

A. They weren't.

Q. They remained at the airport?

A. In Pascagoula?

Q. Yes.

A. They weren't in Pascagoula. The boxes were-- as I recall, they were removed from-- at Destin.

Q. Oh, the boxes were removed at Destin. They didn't get back to Pascagoula?

A. I think it was Destin.

Q. So the boxes got off when Mr. Scruggs and his wife got off?

A. I believe that's true.

Q. Okay. Tell me what you and Mr. Scruggs

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discussed about the documents, anything about the documents during the flight either to Orlando or back to Destin where he got out with the boxes of documents.

A. The only-- the only thing that I recall discussing with Mr. Scruggs, and I think this is fairly accurate--

(Off the record.)

MR. SMITH:

Q. What did you and Mr. Scruggs discuss having to do with the documents during the flight either to Orlando or back to Destin where Mr. Scruggs got out of the plane with the boxes of documents?

A. I hate to bring this up again, but it's the truth, and I know you're looking for it, and the only thing I can recall discussing with Mr. Scruggs was the Farmer's Insurance takeover.

Q. And what was the substance of that conversation?

A. I felt that that was a compelling situation for an ongoing fraud involving King & Spalding.

Q. Is that the only thing that you discussed at all relating to the documents during the flight to Orlando or back to Destin with Mr. Scruggs?

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A. Yes.

Q. You didn't discuss the contents of any of the documents, either specifically or generally?

A. No. I did not.

Q. You had previously testified that you told Mr. Scruggs you wanted the documents to be put in a safe place and that Mr. Scruggs indicated to you he had a vault.

Given that conversation, did he explain to you why he took the documents off the plane in Destin?

A. No.

Q. Did he say anything about why he was taking the documents with him to Destin and not letting them go back with you to be put in the vault?

A. No, but I don't think it was-- I don't think it was unusual. I don't think it's-- I don't know. I just-- he didn't say anything.

Q. There was no discussion whatsoever about why the documents were-- or that the documents were going to be taken off the plane and go with Mr. Scruggs at Destin?

A. There might have been, but I had given him custody of them, and at which point I had full trust

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that he would do the right thing with them, whatever.

Q. Did you understand he was going to open the boxes and read the documents?

A. I assumed he would.

Q. When was the next time that you saw any of the boxes that you had originally delivered to Nina Selz or any of the documents in them after the trip to Orlando on Dick Scruggs' plane?

A. That's a tough one. I don't remember.

Q. Did you ever see the boxes, approximately three in number, or any of the documents in them subsequent to the trip to Orlando on Dick Scruggs' plane?

A. Subsequent to?

MR. ROYALS:

After.

A. Boy, I have a tough time with that word. Yes.

MR. SMITH:

Q. You did? Where?

A. Did I see the documents after they were in the vault; is that correct? Is that what you're saying?

Q. Well, did you?

A. Tell me the question.

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MR. ROYALS:

Did you see the documents after the trip in the plane?

A. Yes.

MR. SMITH:

Q. Where, if you remember?

A. I saw them in the-- what is known as the hearing loss center, which had the vault.

Q. The vault was at the hearing loss center?

A. Yes. Well, it was actually a-- I don't know, a-- it housed many, many things, among them a bunch of tools and boxes and things like that. That's to my best recollection. I'm sorry. If I'm wrong, I'm wrong.

Q. When you saw the boxes-- when you saw the documents in the vault, were they out of the boxes, organized in some way or in a file? What was their condition? Where were they stacked up? How were they there?

A. I didn't-- I don't remember exactly. They were inside the vault and among a number of other objects in boxes.

Q. Okay. But were they, like, put on a shelf?

A. No.

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Q. Were they in the original boxes that you had put them in when you delivered them to Nina Selz?

A. I believe they were.

Q. Were the boxes unsealed at that time when you got-- saw them in the vault at the hearing loss center?

A. No. I unsealed them.

Q. Are you sure about that?

A. As I recall, I did unseal them.

Q. When you unsealed them, was the seal the one that you had put on them?

A. I didn't really have a seal. It was sort of, like, a tape.

Q. Was the tape that you unsealed at the hearing loss center the tape that you had put on there or were they subsequently taped up?

A. No. It was the tape I put on. If I-- you know, if you're saying did somebody else tape this after and somebody open it, look at it, what-- no. I opened the boxes, as I recall. There were three boxes, as I recall. There might have been four boxes because there was something else. There might have been a smaller box, but I don't remember exactly. Things got a little confused.

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Q. Well, you had said earlier that when you-- when the boxes were taken off the plane at Destin, when Mr. Scruggs and his wife got off, that you assumed he was going to look at the documents.

A. He was going to look at the documents?

Q. Right.

A. No. I didn't assume that at all. I assume that he would do what he would do in terms of a custody, taking these documents off the hands of Nina Selz.

Q. So is it your belief that the boxes were-- had not been opened after you had sealed them up prior to giving them to Nina Selz until you opened them in the vault at the hearing loss center?

A. I don't know, but I think I must have opened them.

Q. Why do you think that?

A. Because I probably did.

Q. My question is, do you specifically recall that or are you making an assumption?

A. I think I did.

Q. You think you recall that?

A. I think I might have.

(Off the record.)

MR. SMITH:

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Q. Now, Mr. Williams, when you saw-- how long-- approximately how long after the flight to Orlando in Mr. Scruggs' plane did you see the boxes of documents that you had retrieved from Nina Selz in the vault in the hearing loss center?

A. It was not very long. I wanted to check and see that they were there, so it couldn't have been but a few days, maybe-- I don't remember-- I really can't specifically apply that exactly, time wise.

Q. All right. A few days?

A. Possibly, few days.

Q. Who was with you?

A. Nobody.

Q. Who took you there?

A. The first time I saw them, I asked for someone to open it for me. And I just wanted to make sure that they were safe.

Q. Was there some type of a reception desk or guard desk? How did you get to the documents?

A. Well, I do believe I had to ring the bell and get in, inside. I'm not sure-- Exactly what do you mean by guard? There wasn't-- I was permitted to go in the building, if that's what you mean.

Q. Was Mr. Scruggs there at that time?

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A. No. I-- the only real recollection I have of Mr. Scruggs being at-- is the meeting that I have referred to with the Attorney General and I've-- I did have, I think, conversation, and I must have given him some documents at some point to look at, and in order to examine and see if there was any reason to bring this to an official government body, including Congress.

Q. Did you begin to look at the documents while they were in the vault?

A. I looked at a few, yes.

Q. And did you look at them along with Mr. Scruggs?

A. I don't remember being in the same room, but I think he must have looked at them. I mean, I could have handed some documents to him. I don't remember exactly.

Q. But while they were--

A. I-- just, I mean, you know, like hand, here, that sort of thing, I don't recall that exactly, but--

Q. Is it correct that you and he were in the hearing loss center at the same time reviewing documents from these boxes?

A. At some time, yes.

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Q. And were there others from his law office also reviewing them?

A. The only time that I remember specifically was the Sunday-- I believe it was a Sunday when the Attorney General of Mississippi was present, but he-- the Attorney General interviewed me, personally. And I do not-- I really don't want to talk about the conversation, but that-- I don't think it's something that I should answer because I don't know the law.

Q. Did you pick out some documents from these boxes to show to Mr. Scruggs?

A. I did, I think, yes.

Q. And approximately how long after the flight to Orlando on his plane did you do this, did you pick out documents and show them to Mr. Scruggs?

A. I don't think it was that long.

Q. Within a week?

A. Yes. And, then again, I'm not sure whether it was a week or-- it may be longer. We're dealing with something that I really don't have a lot of memory about. My memory is getting a little bit dimmer on the things that went on, what happened, you know.

Q. Did you--

A. And I'm-- you know, I can't really say.

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But it wasn't that long. You know, I can't really say that it was long.

Q. Okay. Did you show these documents to Mr. Scruggs that you had picked out before you had the meeting with the Attorney General?

A. I believe I did, some.

Q. Did you ever-- well, did you and Mr. Scruggs discuss these documents with each other that you had picked out for him to look at?

A. I don't recall discussing anything. I think whatever he received from me was-- he looked at for what it was. I mean--

Q. Well, did you tell him anything? Did you say, here are some documents I think you'll find interesting or anything like that? What did you tell him?

A. Possibly. I mean, I-- I can assume that that was the tenor of the conversation.

My main point, as I say, first, was to secure a custodian of these documents, to put them with someone whom I trusted and to get them out of the hands of Nina. And when I was offered a strong box, so to speak, I felt that they would be secure.

At another point, I assumed that they had to get out. I had been turned down by Judge Wine on

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the 31st of March. I felt Judge Wine would never, never want to seek the truth. And I wanted to bring this before a court or somebody of law. I felt there was a crime--

Q. Mr. Williams, you're not answering my question.

A. I'll try to answer it. I felt it was a crime.

Q. Do you know a question that I've asked?

A. At this point, I can't repeat it.

Q. Well, why don't you let me ask you a question and then you can try to answer it. Who suggested that you open the boxes and pick documents out and show them to Mr. Scruggs?

A. No one.

Q. You decided to do it?

A. Yes.

Q. Did you invite him there so that you could show him the documents?

A. What?

Q. How did he know that you were there and wanted to show him documents?

A. I don't know. Mr. Scruggs is, as I recall, in those days was moving around. If you could catch him for two minutes or you could see him

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for two minutes, he was like a-- he's constantly moving. He's constantly in motion. I don't remember.

Q. Who was with him at this meeting where you showed him some of the documents out of the boxes of documents you've taken from Wyatt?

A. You've asked me the question before. I'd like to go back on the-- are we talking specifically when I met with the Attorney General or--

Q. No. I'll ask the question again. I did not ask it narrow enough. The first time you ever showed documents to Dick Scruggs from the boxes that you took-- from the boxes of documents you took from Wyatt, was anybody with him?

A. I don't know. I don't remember if anybody was with him. I don't recall being in the same room with him on-- you know, here, look at this or whatever. I don't recall.

Q. Well, this is very confusing to me. You've told me that you opened the boxes, you picked out some documents for the purpose of showing them to Mr. Scruggs, and I think you've testified that you, indeed, showed them to Mr. Scruggs. Were you not in the same room when this occurred?

A. No. I believe there was a time lapse.

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There was a time period.

Q. So you picked out some documents and left them somewhere for Mr. Scruggs to come look at at a subsequent time?

A. I suppose so. I don't remember that.

Q. Well, how did it happen, then?

A. Well, that's what I'm saying. I don't remember. I mean, I could have handed it to him. I--

(Off the record.)

MR. SMITH:

Q. Mr. Williams, I just want to know the circumstances surrounding Mr. Scruggs' review of the documents you took from Wyatt, Tarrant & Combs the first time he looked at them.

A. I don't recall. He could have been bored to tears, for all that matter. I don't know. But the essential-- I just-- he was so busy with everything, I don't think he and I ever really just sat down and really went through anything until-- I was available to the Attorney General on some day. I think it was a Sunday. And I spoke with the Attorney General, and there were some people who were meeting with the Attorney General of Mississippi, but I wasn't-- you know, I wasn't a lawyer--

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Q. Mr. Williams, the question has to do only, right now, with the first occasion on which Mr. Scruggs looked at the documents.

A. I don't remember. I probably gave him some documents to look at--

Q. Out of the boxes?

A. -- but I don't remember the date. Yes, out of the boxes.

Q. Were there ever occasions where you and he were together with some of these documents and you would say, here, Mr. Scruggs, or Dick, or however you call him, take a look at this, check this out, anything like that?

A. Well, my recollection may not be the same, but I probably would have to say yes to that. I don't recall it, and I know what seems to be where your reference is. There was an article in the St. Petersburg paper, and that was not my quote, but I would say probably that I could have said, here, look at this, but I don't remember that.

Q. Well, did you spend a number of hours reviewing the documents with Mr. Scruggs?

A. Hours?

Q. Uh-huh.

A. No one spends hours with Mr. Scruggs.

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Q. The answer is no, you did not?
A. No.
Q. On how many occasions did Mr. Scruggs review documents in your presence?
A. In my presence?
Q. Uh-huh.
A. I don't-- I don't know that he did or did not. I can't-- You know, what do you mean by presence? In the same building or in the same-- I mean, it could have been in the same building, but not in the same room reviewing them, looking at them, explaining them.
Q. What do you remember?
A. I don't remember much of talking to Mr. Scruggs about documents.
Q. Now, when you saw documents in the vault at the hearing loss center, had a copy been made of them?
A. No.
Q. Are you aware of--
A. I don't think so.
Q. Are you aware of copies being made?
A. No. I don't know. Maybe.
Q. You mentioned something about an article in The St. Petersburg Times.

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A. Yes. I noticed that you had it over there.

Q. And you read it?

A. Yes.

Q. Does it accurately reflect what happened when you showed the documents to Mr. Scruggs?

A. You know, that's what I was saying. That's not my quote.

Q. Well, that's my question. There's no quote.

A. Does it accurately reflect? I don't know. The article is so-- I mean, the two articles-- it's a reporter's viewpoint of different people talking about different things dealing with an issue.

Q. On how many occasions were you present when Mr. Scruggs was also present and any of the documents you took from Wyatt, Tarrant & Combs were present?

A. Huh? Say again?

Q. On how many occasions were you, Mr. Scruggs and any of the documents that you took from Wyatt in the same place at the same time?

A. I don't know. With the exception of perhaps once when I would say, here, look at these

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documents or something, which I assume to be the case. And I don't remember being overly-- and when the Attorney General, perhaps, two, maybe-- I don't know. Two, probably.

Q. Is that including the meeting with the Attorney General?

A. No, no, no. I'm saying-- yes, probably. But I'm not really sure.

Q. Now, you say you were at a meeting on a Sunday at the hearing loss center where Mr. Scruggs and Attorney General Moore were present, correct?

A. Yes. I was in the room, that room.

Q. Who else was present?

A. Well, you've asked me that question before, and I don't remember. Could we go back on that transcript and see what the answer is? Because I don't really-- my recollection is that there were a couple of people that I didn't know and the Attorney General-- I was just in the room with and I saw a few of them around. I think Bozeman might have been there. Bozeman was there. Yes. He was there for a time. Mr. Barrett was there, I think. I don't-- it's hard for me to recall. I don't remember-- That's it. That's all that I remember.

Q. Was there any discussion at that meeting

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of the documents?

A. I don't know. I really assumed that there was discussion with-- as a non-lawyer, I would have to say that the Attorney General may have been discussing this, but when I discussed-- talked with the Attorney General, I don't know.

Q. What was the discussion about the documents during that meeting?

A. During my meeting with the Attorney General?

Q. The meeting where all of these various people were present, including the Attorney General.

A. I don't know if I could--

MR. CARROLL:

Excuse me, Gordon. You weren't present at the hearing in Hattiesburg, but my recollection is now that the judge made it very clear that he did not want us to get into specific conversations between the Attorney General and other people in anticipation of this litigation. I may remember that incorrectly, but I believe that was pretty clear on the record, wasn't it, Bill?

MR. DURHAM:

No. In an effort to save time, I shortened my answer to one word. But what I think

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was actually discussed at the status conference was that you were sensitive to this issue, and we are all sensitive to this issue, but to the extent that we are pursuing the trail of the documents, we're entitled to do that, and if there is an objection and something needs to be taken to the Magistrate judge, we could do that.

MR. CARROLL:

Let's do this. It's now ten minutes after 5:00. We're not going past 5:15 anyway. We're going to recess the deposition. Why don't I review what I considered-- maybe I'm wrong. There will be a number of prior occasions when I've been wrong. So if I am, I won't raise it. But why don't we recess at this point.

MR. SMITH:

Before we stop-- and I know you gentlemen both have told me that you must leave, and I respect that-- but could you give us one moment to caucus and let us come back?

MR. CARROLL:

Sure.

(Deposition recessed at 5:10 p.m.)

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CERTIFICATE OF COURT REPORTER

I, MONICA SCHROEDER, Court Reporter and Notary Public, in and for the County of Jackson, State of Mississippi, hereby certify that the foregoing pages, and including this page, contain a true and correct transcript of the testimony of the witness, as taken by me at the time and place heretofore stated, and later reduced to typewritten form by computer-aided transcription under my supervision, to the best of my skill and ability.

I further certify that I placed the witness under oath to truthfully answer all questions in this matter under the authority vested in me by the State of Mississippi.

I further certify that I am not in the employ of, or related to, any counsel or party in this matter, and have no interest, monetary or otherwise, in the final outcome of the proceedings.

Witness my signature and seal, this the 23rd day of April, 1997.

Monica Schroeder, C.S.R. #1285
My Commission Expires June 12, 1999

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ERRATA SHEET

I, MERRELL WILLIAMS do solemnly swear that I have read the foregoing 613 pages and that the same is a true and correct transcript of the testimony given by me at the time and place hereinbefore set forth, with the following corrections:

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MERRELL WILLIAMS

NOTARIZATION

I, _____, notary public for the State of Mississippi, _____ County, do hereby certify that Merrell Williams personally appeared before me this _____ day of _____, 1997, at _____, Mississippi.

My Commission Expires:

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